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Nos. 80-289 and 80-692

In the Supreme Court of the United States

OCTOBER TERM, 1980

NATIONAL LABOR RELATIONS BOARD

and

UNITED MINE WORKERS OF AMERICA, LOCAL NO. 1854
AND UNITED MINE WORKERS OF AMERICA

—*v.*—

AMAX COAL COMPANY, A DIVISION OF AMAX, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

PETITION FOR CERTIORARI IN NO. 80-289 FILED AUGUST 26, 1980
PETITION FOR CERTIORARI IN NO. 80-692 FILED OCTOBER 27, 1980
CERTIORARI GRANTED JANUARY 19, 1981

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Case No.: 27-CB-900 & 27-CC-571

IN THE MATTER OF:

AMAX COAL COMPANY A DIVISION OF AMAX INC., ET AL.

1.8.75 Charge filed in Case No. 27-CB-900

1.14.75 Amended Charge filed in Case No. 27-CB-900

1.27.75 Charge filed in Case No. 27-CC-571 .....

2.14.75 Complaint and Notice of Hearing in Case No. 27-CB-900, dated

2.24.75 Regional Director's Notice of Change of Place of Hearings, in Case No. 27-CB-900, dated

2.27.75 Petitioner [1] Unions' Answer, in Case No. 27-CB-900, received

2.27.75 Petitioner Union's Motion to Change the Site of the Hearing, in Case No. 27-CB-900, dated

3.4.75 Judge James T. Barkers telegram denying Motion, in Case No. 27-CB-900, dated

3.4.75 Petitioner Unions' Motion for Postponement of Hearing, in Case No. 27-CB-900, dated

3.5.75 Unions' telegram requesting that the Regional Director consider UMWA's Motion for change of Hearing site, in Case No. 27-CB-900, dated

3.5.75 General Counsel second telegram asking for a prompt decision regarding motion to change site of hearing, in Case No. 27-CB-900, dated

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[1] Petitioner Unions herein were the Respondents before the Board.

3.5.75 Petitioner Employer's Motion in Opposition to Petitioners' Unions Motion to Change the site of the Hearing in Case No. 27-CB-900, dated

3.6.75 Regional Director's telegram denying Motion, of Unions' in Case No. 27-CB-900, dated

3.10.75 Regional Director's telegram Postponing Hearing Indefinitely, in Case No. 27-CB-900, dated

3.18.75 Regional Director's Order Rescheduling Hearing in Case No. 27-CB-900, dated

4.22.75 Regional Director's Complaint and Notice of Hearing in Case No. 27-CC-571, dated

4.23.75 Regional Director's Order Consolidating Cases in Case Nos. 27-CB-900, and 27-CC-571, dated

4.23.75 Second Amended Charge in Case No. 27-CB-900, dated

4.28.75 Unions' telegram request postponement of Hearing, in Case Nos. 27-CB-900, and 27-CC-571, dated

4.30.75 Union's Motion to Postpone Hearing in Case Nos. 27-CB-900, and 27-CC-571, dated

4.30.75 Regional Director's telegram Postponing Hearing in Case Nos. 27-CB-900, 27-CC-571, dated

5.2.75 Unions' Answer in Case No. 27-CC-571, dated

7.3.75 First Amended Charge filed in Case No. 27-CC-571.

7.3.75 Third Amended Charge filed in Case No. 27-CB-900

1.27.76 New Acme's Motion to Intervene in Case Nos. 27-CB-900, and 27-CC-571, dated

2.3.76 Acting Regional Director's Order Denying Motion in Case Nos. 27-CB-900 and 27-CC-571

2.12.76 Acting Regional Director's Order Consolidating Cases, and Amended Complaint and Notice of Hearing in Case Nos. 27-CB-900, and 27-CC-571, and 27-CB-941, dated

2.23.76 Regional Director's Order Extending Time in Which to File Answer, dated

3.25.76 Regional Director's Amendment to Amended Complaint, and Order Rescheduling Hearing, denied

4.2.76 Petitioner Unions' Answer to Order Consolidating Cases, Amended Complaint and Notice of Hearing as Amended by Amendment to Amended Complaint and Order Rescheduling Hearing, dated

6.21.76 Regional Director's Order Transferring Motions, dated

6.22.76 Hearing opened

6.24.76 General Counsel's Motion to Amend Complaint, dated

7.15.76 Hearing closed

3.22.77 Administrative Law Judge's Decision issued

6.27.77 Petitioner Employer's [2] Exceptions, received

6.27.77 Petitioner Unions' Exceptions to Administrative Law Judge's Decision, received

7.18.77 General Counsel's Cross-Exceptions to the Administrative Law Judge's Decision and Recommended Order, received

7.18.77 Petitioner Unions' request for oral argument, dated

4.27.77 Petitioner Unions' renewed request for oral argument, dated

unknown Petitioner Unions' motion to correct transcript

unknown Petitioner Employer's request to argue orally, denied

9.27.78 Decision and Order issued by the National Labor Relations Board

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[2] Petitioner Employer herein was Charging Party before the Board.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

Cases Nos. 27-CB-900
27-CB-571
27-CB-941

Feb. 17, 1976

UNITED MINE WORKERS OF AMERICA, LOCAL NO. 1854, AND UNITED MINE WORKERS OF AMERICA

and

AMAX COAL COMPANY

ORDER CONSOLIDATING CASES, AMENDED COMPLAINT AND NOTICES OF HEARING

It having been charged in Case No. 27-CB-900, Case No. 27-CC-571, and Case No. 27-CB-941, by Amax Coal Company (herein called the Employer) that United Mine Workers of America, Local No. 1854, and United Mine Workers of America, (herein called Local 1854, and UMWA, respectively and Respondents jointly), have engaged in and are engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, *et seq.*, 73 Stat. 519 (herein called the Act), and Complaints having issued in Case No. 27-CB-900 on February 14, 1975, and in Case No. 27-CC-571 on April 22, 1975, and in Case No. 27-CB-941 on August 15, 1975, and Cases Nos. 27-CB-900 and 27-CC-571 having previously been consolidated on April 23, 1975, the General Counsel of the National Labor Relations Board (herein called the Board), by the undersigned Acting Regional Director for the Twenty-Seventh Region, having duly

considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

HEREBY ORDERED, pursuant to Section 102.33 of the Board's Rules and Regulations, Series 8, as amended, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated, the undersigned Acting Regional Director for the Twenty-Seventh Region, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended, Section 102.15, hereby issues this Amended Complaint and Notice of Hearing and alleges as follows:

I

(a) The Original Charge in Case No. 27-CB-900 was filed by the Employer on January 8, 1975, and served on Respondents on January 9, 1975, by registered mail.

(b) The First Amended Charge in Case No. 27-CB-900 was filed by the Employer on January 14, 1975, and served on Respondents on the same day by registered mail.

(c) The Second Amended Charge in Case No. 27-CB-900 was filed by the Employer on April 23, 1975, and served on Respondents on the same day by registered mail.

(d) The Third Amended Charge in Case No. 27-CB-900 was filed by the Employer on July 3, 1975, and served on Respondents on the same day by registered mail.

(e) The Original Charge in Case No. 27-CC-571 was filed by the Employer on January 27, 1975, and served on Respondents on the same day by registered mail.

(f) The First Amended Charge in Case No. 27-CC-571 was filed by the Employer on July 3, 1975, and served on Respondents on the same day by registered mail.

(g) The Charge in Case No. 27-CB-941 was filed by the Employer on May 29, 1975, and served on Respondents on the same day by registered mail.

II

(a) The Employer is now, and at all times material herein has been, a corporation duly organized under and existing by virtue of the laws of the State of New York, and maintains its principal office and place of business near Gillette, Wyoming, know as the Belle Ayr Mine.

(b) The Employer is now, and at all times material herein has been, engaged at the Belle Ayre Mine in the production of coal.

(c) The Employer, in the course and conduct of its business operations at the Belle Ayre Mine annually sells and ships goods and materials valued in excess of $50,000 directly to points and places outside the State of Wyoming.

(d) Peabody Coal Company, Energy Fuels Corporation, Big Horn Coal Company, Consolidation Coal Company, Energy Coal Company, Kemmerer Coal Company, the North American Coal Corporation, Pittsburg & Midway Coal Mining Company, Usibelli Coal Mine, Inc., among others (all referred to as the Peabody Group) are employers engaged in the mining and sale of coal, and have joined together into a multi-employer bargaining association for the purposes of joint negotiations for the purpose of collective bargaining regarding the wages, hours, terms and conditions of employment of their employees, with Respondents.

(e) The Employer is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

III

The Respondents are now, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

IV

At all times material herein, the following-named persons occupied the position set opposite their respective names, and have been, and are now, agents of the Respondents, acting on their behalf and are agents within the meaning of Section 2(13) of the Act:

Arnold Miller	— President, UMWA
Duke Grant	— President, Local 1854
Roy Casady	— Recording Secretary, Local 1854
James P. Marketti	— Western Regional Director, UMWA
Billie L. Halbrook	— President, Local 1854
Merrill Thornock	

V

Since on or about March 1, 1975, and continuing to date, Respondents have interfered with, restrained and coerced, and are interfering with, restraining and coercing, employees in the exercise of rights guaranteed in Section 7 of the Act, by the following acts and conduct occurring at the Belle Ayre Mine near Gillette, Wyoming.

(a) Since on or about May 1, 1975, Respondents, acting by and through Duke Grant, Roy Casady, and other authorized representatives, established a picket line at the Employer's Belle Ayr Mine near Gillette, Wyoming, in which the pickets and vehicles belonging to the pickets obstructed, blocked and prevented ingress and egress of employees, customers and other persons from entering the Employer's premises.

(b) Since on or about May 1, 1975, Respondents, acting by and through Duke Grant, Roy Casady, and other authorized representatives, have threatened employees with injury and damage to property if they should attempt to enter or leave the Employer's premises.

(c) Since on or about May 1, 1975, Respondents, acting by and through Duke Grant, Roy Casady, and other authorized representatives, damaged and attempted to cause damage to motor vehicles and other property of individuals including employees who attempted to enter and leave the Employer's property.

VI

Commencing on or about November 2, 1974 and continuing to date, Respondents, by their officers, agents and representatives, have restrained and coerced, and are restraining and coercing the Employer in the selection of its representatives for the purposes of collective bargaining and the adjustment of grievances, by the following acts and conduct:

(a) Since on or about January 6, 1975, as a part of their contract proposal for a proposed collective bargaining agreement, Respondents have adamantly insisted on the inclusion of a Training Clause, Article XV Section (a), which clause provides for representatives for the purposes of collective bargaining, which are not selected by the Employer.

(b) Since on or about January 6, 1975, as a part of their contract proposal, Respondents have adamantly insisted on the inclusion of Pension and Health and Welfare Trusts provisions, by the terms of which the trustees of those trusts, who would be collective bargaining representatives, would not be selected by the Employer.

(c) On or about November 2, 1974, and thereafter, Respondents, by threat of strike, attempted to coerce the Employer in its selection of its collective bargaining representative, by offering to extend the existing agreement if the Employer would agree to bargain through an employer-association, the so-called Peabody group.

VII

All production and maintenance employees employed by the Employer at the Belle Ayr Mine near Gillette, Wyoming, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

VIII

Since on or about March 27, 1972, a majority of the employees of the Employer in the unit described above in paragraph VII, designated or selected the Respondents as their representative for the purposes of collective bargaining with the Employer.

IX

On or about November 22, 1974, a majority of the employees of the Employer in the unit described above in paragraph VII, by a secret ballot election conducted under the supervision of the Regional Director for the Twenty-Seventh Region of the National Labor Relations Board, designated and selected Respondent Local 1854 as their representative for the purposes of collective bargaining with the Employer and on or about December 9, 1974, said Regional Director certified the Respondent Local 1854 as the exclusive collective bargaining representative of the employees in said unit.

X

At all times since March 27, 1972, and specifically since December 9, 1974, and continuing to date, Respondent Local 1854 has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph VII, and by virtue of Section 9(a) of the Act, has been and is now, the exclusive representative of all of the employees in said unit for the purposes of collective bargaining with respect to

rates of pay, wages, hours of employment, and other terms and conditions of employment.

XI

Since on or about November 23, 1974, and continuing to date, the Employer requested, and is requesting, Respondent Local 1854 to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective bargaining representative of all the employees of the Employer in the unit described above in paragraph VII.

XII

On or about March 27, 1972, Respondents entered into a collective bargaining agreement with the Employer relating to the terms and conditions of employment of the employees in the unit described above in paragraph VII, said contract to be effective until November 12, 1974, though later extended by Respondents until January 12, 1975.

XIII

On or about September 10, 1972, Respondents served notice upon the Employer of its desire to modify or terminate the contract referred to above in paragraph XII.

XIV

On or about January 13, 1975, Respondents engaged in a strike, and since that date have been engaging in said strike over its dispute with the Employer, in order to compel the Employer to bargain through a multi-employer association, the Peabody Group, notwithstanding that the Employer has not bound itself to any multi-employer association for the purposes of collective bargaining.

XV

An object of the acts and conduct engaged in by Respondents described in paragraph XIV above, has been to force and require the Employer to join and be represented by an employer organization for purposes of collective bargaining regarding labor relations and employment conditions of the Employer's employees.

XVI

At no time since the reopening of the contract described in paragraph XII above, have Respondents given notice to the Federal Mediation and Conciliation Service and to the Department of Labor and Statistics, of the State of Wyoming, pursuant to Section 8(d)(3) of the Act, of its desire to terminate or modify its contract with the Employer described above in paragraph XI and/or of the existence of a dispute between Respondents and the Employer.

XVII

Since on or about January 6, 1975, and at all times thereafter, the Respondents have refused and continue to refuse to bargain collectively with the Employer, as the exclusive collective bargaining representative of all the employees in the unit described above in paragraph VII in that:

(a) On or about January 13, 1975, Respondents engaged in a strike and since that date have been engaging in said strike over its dispute with the Employer, in order to compel the Employer to bargain through a multi-employer association, notwithstanding that the Employer has not bound itself to any multi-employer association for the purposes of coliective bargaining.

(b) Since on or about January 6, 1975, until on or about February 3, 1975, the Respondents have refused to meet and bargain with the Employer concerning wages, hours, and other terms and conditions of employ-

ment of the employees in the union described above in paragraph VII.

(c) Since on or about January 13, 1975, Respondents engaged in the strike described in paragraph XIV above, without having notified the appropriate federal mediation agency as described in paragraph XVI above, for the purpose of modifying or terminating the contract referred to in paragraph XII above.

(d) Since on or about January 6, 1975, as a part of their contract proposal, Respondents have adamantly insisted on the inclusion of the following clause in the proposed collective bargaining agreement;

Article I Enabling Clause

> . . . This Agreement shall be binding upon all signatories hereto, and their successors and assigns. In consideration of the Union's execution of this Agreement, each Employer promises that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement. Provided that the Employer shall not be a guarantor or be held liable for any breach by the successor or assignee of its obligations, and the UMWA will look exclusively to the successor or assignee for compliance with the terms of this Agreement.

(e) Since on or about January 6, 1975, as a part of their contract proposal, Respondents have adamantly insisted on the inclusion of the following "union signatory" clauses:

> Article II
>
> Scope and Coverage
>
> . . .

Section (g) Contracting and Subcontracting

(1) Transportation of Coal—The transportation of coal as defined in paragraph (a) may be contracted out only to a contractor employing members of the UMWA under this Agreement and only where contracting out such work is consistent with the prior practice and custom of the Employer.

(2) Repair and Maintenance Work—Repair and maintenance work customarily performed by classified Employees at the mine or central shop shall not be contracted out except (a) where the work is being performed by a manufacturer or supplier under warranty, or (b) where the Employer does not have available equipment or regular Employees with necessary skills available to perform the work at the mine or central shop, provided, however, that the work shall be performed by UMWA members to the extent and in the manner permitted by law.

(f) Since on or about January 6, 1975, as a part of their contract proposal, Respondent's have adamantly insisted on the inclusion of the following Work Jurisdiction clause:

Article II Scope and Coverage

Section (a) Work Jurisdiction

The production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal and transportation of coal in and around the mine and to a screening, crushing, washing or other preparation facility or other mine-related operation (except by waterway or rail not owned by Employer), repair and maintenance work normally performed at the mine site or at a central shop of the Employer and maintenance of gob piles and mine roads, and work customarily related to all of the above shall be performed by classified Employees of the Employer covered by and in accord-

ance with the terms of this Agreement. Contracting, subcontracting, leasing and subleasing, and construction work, as defined herein, will be conducted in accordance with the provisions of this Article.

Nothing in this section will be construed to diminish the jurisdiction express or implied, of the United Mine Workers.

(g) Since on or about January 6, 1975, as a part of their contract proposal, Respondents have adamantly insisted on the inclusion of the following Coal Lands clause, which clause applies to matters outside the scope of and not germane to the contract unit:

Article II Scope and Coverage

Section (f) Application of this Contract to the Employer's Coal Lands

As a part of the consideration for this Agreement, the Employers agree that this Agreement covers the operation of all the coal lands, coal producing and coal preparation facilities identified in Article I which are owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this Agreement, or acquired during its term which may hereafter (during the term of this Agreement) be put into production or use.

(h) Since on or about January 6, 1975, as a part of their contract proposal, Respondents have adamantly insisted on the inclusion of the following Training clause, which provides for representatives not selected by the Employer:

Article XV Training

Section (a) Priority

The parties agree that the establishment of effective training programs for Employees is essential to safe and efficient production of coal. Toward that end there shall be established a Joint Western Sur-

face Mining Industry Training Committee which shall consist of 3 representatives appointed by the United Mine Workers of America and 3 representatives of the industry, appointed by the Employers. This committee shall meet primarily for the purpose fostering and promoting the advancement of effective training in the industry.

. . .

(i) Since on or about January 6, 1975, Respondents have conditioned the reaching of agreement on a contract on the Employer's withdrawal of all litigation, including the unfair labor practice charges herein.

(j) Since on or about January 6, 1975, Respondents, as a part of their contract proposal, have adamantly insisted on the inclusion of Pension and Health and Welfare Trusts provisions, by the terms of which the trustees of those trusts, who would be collective bargaining representatives, would not be selceted by the Employer.

(k) Since on or about January 6, 1975, and at all times thereafter to date, Respondents have engaged in surface bargaining, negotiating with the Employer in bad faith and with no intention of entering into any final or binding collective-bargaining agreement, in that Respondents have exhibited a predetermined resolve not to agree to any proposal but their own.

XVIII

Commencing on or about January 13, 1975, and continuing to date, Respondents, by their officers, agents, and representatives have engaged in, and are engaging in, and by picketing, requests, appeals, orders, instructions, and other means have induced and encouraged, and are inducing and encouraging, employees of the Employer and other persons engaged in commerce or in industries affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work

on any goods, articles, materials, or commodities, or to perform services for their respective employers, and have threatened, coerced and restrained other persons engaged in commerce or in industries affecting commerce, where an object thereof is to force or require the Employer to enter into an agreement, provisions of which are prohibited by Section 8(e) of the Act, those prohibited provisions being those recited in paragraph XVII(d), (e), and (f), above.

XIX

By the acts described above in paragraph V, Respondents did restrain and coerce, and are restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and are engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

XX

By the acts described above in paragraph VI, Respondents did restrain and coerce, and are restraining and coercing an Employer, Amax Coal Company, in the selection of its representatives for the purposes of collective bargaining, and thereby did engage in, and are engaging in, unfair labor practices affecting commerce, within the meaning of Section 8(b)(1)(B) and Section 2(6) and (7) of the Act.

XXI

By the acts described above in paragraph XVII, and by each of said acts, Respondents did refuse to bargain collectively, and are refusing to bargain collectively, with the Employer, and thereby did engage in, and are engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

XXII

By the acts and conduct described in pargraph XVII above, for the objective described in paragraph XVIII above, and by the acts and conduct described in paragraph XIV above, for the objective described in paragraph XV above, the Respondents have engaged in unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(A), and Section 2(6) and (7) of the Act.

XXIII

By the acts and conduct described in paragraph XVI above, the Respondents have engaged in unfair labor practices within the meaning of Section 8(d)(2) and Section 2(6) and (7) of the Act.

XXIV

The acts and conduct of Respondents, set forth in paragraph V, VI, XVII and XVIII, occurring in connection with the operations of the Employer, as set forth in paragraph II hereof, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several states and tend to lend to labor disputes burdening and obstructing commerce and the free flow of commerce.

XXVI

The acts of Respondents constitute unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A), 8(b)(3), 8(b)(4)(i)(ii)(A), 8(d)(3) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 30th day of March, 1976 at 10:00 a.m. (MDT) at

Room 260 New Custom House
721 19th Street
Denver, Colorado

a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board, on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony. Form NLRB-4660, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings Pursuant to Section 10 of the National Labor Relations Act, as Amended, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, the Respondents shall file with the undersigned Acting Regional Director, acting in this matter as agent for the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immeiately upon the filing of its Answer, Respondents shall serve a copy thereof on each of the other parties.

Dated at Denver, Colorado this 12th day of February, 1976.

[SEAL]

/s/ W. Bruce Gillis, Jr.
W. BRUCE GILLIS, JR.
Acting Regional Director
National Labor Relations Board
Region 27
260 New Custom House
721 19th Street
Denver, Colorado 00202

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

Cases Nos. 27-CB-900
27-CC-571
27-CB-941

UNITED MINE WORKERS OF AMERICA, LOCAL NO. 1854, and UNITED MINE WORKERS OF AMERICA

and

AMAX COAL COMPANY, A DIVISION OF AMAX INC.

AMENDMENT TO AMENDED COMPLAINT, AND ORDER RESCHEDULING HEARING

WHEREAS, an Order Consolidating Cases, Amended Complaint and Notice of Hearing having previously been issued in the above-entitled cases on February 12, 1976, by the Acting Regional Director for the Twenty-Seventh Region;

NOW, THEREFORE, pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board, Series 8, as Amended, the undersigned Regional Director hereby issues this Amendment to Amended Complaint, and Order Rescheduling Hearing, wherein the Amended Complaint is further amended, and the Hearing herein is rescheduled, as follows:

1. The name of the Employer is corrected to reflect the correct legal corporate title, i.e., Amax Coal Company, A Division of Amax Inc., in the caption of the Amended Complaint, as well as in line 2, paragraph 1, page one, of the Amended Complaint, and at any other point in the Amended Complaint where the name of the Employer is listed only as Amax Coal Company.

2. Delete from line 3, paragraph II(a) of the Amended Complaint the words ". . . its principal . . .", substituting therefor the word "an".

3. Add the following to the end of line 3, paragraph XVII(d), on page 8 of the Amended Complaint, changing the semicolon at the end of line 3 to a comma: ". . . which is in violation of Section 8(e) of the Act;"

4. Add the following to the end of line 3, paragraph XVII(e), on page 8 of the Amended Complaint, changing the semicolon at the end of line 3 to a comma: ". . . which are violative of Section 8(e) of the Act;"

5. Add the following to the end of line 3, paragraph XVII(f), on page 9 of the Amended Complaint, changing the semicolon at the end of line 3 to a comma: ". . . which is violative of Section 8(e) of the Act when it is read in conjunction with paragraph (g), Article II, of the proposed agreement, which is recited in paragraph XVII(e) of the Amended Complaint."

6. Insert the following language in paragraph XVII (g) on page 9 of the Amended Complaint, in line 3 after the phrase "which clause": ". . . is a non-mandatory subject for bargaining and . . ."

7. Insert the following language in paragraph XVII (h), on page 9 of the Amended Complaint, in line 3 after the word "which": ". . . is a non-mandatory subject for bargaining and . . ."

8. Substitute the following for line 13, the final line, of paragraph XVIII, page 10 of the Amended Complaint: ". . . being those recited in paragraph XVII(d) and (e), and (f) when read in conjunction with paragraph (g), Article II, of the proposed agreement, which is recited in paragraph XVII(e) of the Amended Complaint."

9. Insert the following language in paragraph XX, on page 11 of the Amended Complaint, in line 1, following the comma after the Roman numeral "VI": ". . . and in paragraph XVII(a), (h), and (j) . . ."

PLEASE TAKE NOTICE that pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations,

Series 8, as Amended, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent for the National Labor Relations Board, an original and four (4) copies of an Answer to said Amendment to Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Amendment to Amended Complaint shall be deemed to be admitted to be true and may be so found by the Board.

ORDER RESCHEDULING HEARING

The parties having mutually requested an extension of time for the holding of the Hearing previously scheduled herein,

IT IS HEREBY ORDERED, pursuant to Section 102.16 of the National Labor Relations Board's Rules and Regulations, Series 8, as Amended, that the date of the Hearing herein be, and the same hereby is rescheduled from 10:00 a.m. (MDT) March 30, 1976, to 10:00 a.m. (MDT), June 22, 1976, at

Room 260 New Custom House
721 - 19th Street
Denver, Colorado

Dated at Denver, Colorado this 25th day of March, 1976.

[SEAL]

/s/ Francis Sperandeo
FRANCIS SPERANDEO
Regional Director
National Labor Relations Board
Region 27
260 New Custom House
721 19th Street
Denver, Colorado 80202

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

Cases Nos. 27-CB-900
27-CC-571
27-CB-941

UNITED MINE WORKERS OF AMERICA, LOCAL NO. 1854, AND UNITED MINE WORKERS OF AMERICA

and

AMAX COAL COMPANY, A DIVISION OF AMAX INC.

ANSWER TO ORDER CONSOLIDATING CASES, AMENDED COMPLAINT AND NOTICE OF HEARING AS AMENDED BY AMENDMENT TO AMENDED COMPLAINT AND ORDER RESCHEDULING HEARING

Now comes the United Mine Workers of America (hereinafter "UMWA" or "Union") and its Local 1854 and file this Answer to the Amended Consolidated Complaint which charges that they violated Section 8 of the Act.

I

(a) By letter dated January 9, 1975 (received January 14, 1975), the United Mine Workers of America received a copy of the original charge in Case No. 27-CB-900.

(b) By letter dated January 14, 1975 (received January 16, 1975), the UMWA received a copy of the first amended charge in Case No. 27-CB-900.

(c) By letter dated April 23, 1975, the UMWA received a copy of the second amended charge in Case No. 27-CB-900.

(d) By letter dated July 3, 1975, the UMWA received a copy of the third amended charge in Case No. 27-CB-900.

(e) By letter dated January 27, 1975 (received January 29, 1975), the UMWA received a copy of the original charge in Case No. 27-CC-571.

(f) By letter of July 3, 1975, the UMWA received a copy of the first amended charge in Case No. 27-CC-571.

(g) By letter of May 29, 1975, the UMWA received a copy of the charge in case No. 27-CB-941.

II

(a) The UMWA is without sufficient knowledge to affirm or deny the place of incorporation of Amax Coal Company, a division of Amax, Inc. (hereinafter "Amax"). Amax operates a coal mine known as the Belle Ayr Mine in an area around Gillette, Wyoming.

(b) Admitted.

(c) The UMWA is without sufficient knowledge to affirm or deny paragraph II(c).

(d) Denied. However, Amax, Peabody Coal Company, Energy Fuels Corporation, Kemmerer Coal Company, and Usibelli Coal Mine, Inc. have joined together in such an association. Big Horn Coal Company, Consolidation Coal Company, North American Coal Corporation, and Pittsburgh & Midway Coal Mining Company are not part of said association, having chosen to negotiate with Respondent individually. Respondent is unaware of a company doing business as Energy Coal Company.

(e) The UMWA is without sufficient knowledge to affirm or deny paragraph II(e).

III

Admitted.

IV

Arnold Miller has been President of the UMWA International Union since December 22, 1972; Duke Grant has been President of UMWA Local Union 1854 since

April 1975; Roy Casady has been Recording Secretary of UMWA Local Union No. 1854 since April 1975; James P. Marketti was an employee of the UMWA Organizing Department until July 1975; Billie L. Halbrook was President of UMWA Local Union No. 1854 until April 1975. The remaining allegations of paragraph IV, and specifically the allegations of agency, are denied.

V

The allegations of this paragraph are specifically denied.

VI

The allegations of this paragraph are specifically denied. It is particularly denied that either the representatives to the Joint Western Surface Mining Industry Training Committee which is established in Article XV, Section (a) of the UMWA contract proposal or the trustees of the Trust Funds established in the Health and Retirement Benefits provisions of the UMWA contract proposal, Article XVIII, are collective bargaining representatives within the meaning of the Act. Furthermore, the UMWA, Local 1854, and their members employed at the Belle Ayr Mine have been since 12:01 a.m., January 12, 1975, engaged in a legitimate economic strike against Amax at its Belle Ayr Mine. The strike is not for the purpose of forcing the Employer to engage in multi-employer bargaining, but is a result of the UMWA's long-standing tradition, and the requirement of its Constitution, that there shall be no work where there is no contract.

VII

Admitted. The UMWA further alleges that a unit composed of production and maintenance employees at the Belle Ayr Mine and at coal mines owned and operated by other Employers is likewise a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

VIII

In early 1972, a majority of the production and maintenance employees at the Belle Ayr Mine selected the UMWA as their collective bargaining agent. On March 27, 1972, the UMWA entered into a collective bargaining agreement with AMAX Coal Company for its Belle Ayr Mine.

IX

The UMWA admits that on November 22, 1974, an election was conducted by the NLRB at the Belle Ayr Mine, which the UMWA won by a vote of 45 to 3 and that thereafter, on December 9, 1974, the UMWA was certified as the exclusive bargaining representative for the employees at the Belle Ayr Mine. Though Local 1854 was named in the Representation Petition and Notice of Election, and thereafter in the Certificate of Representation as the exclusive collective bargaining agent of the employees, the UWMA, as the parent body of Local 1854, has been since March 1972, and remains today, through its Constitution, the bargaining agent of the employees at the Belle Ayr Mine.

X

The International Union, UMWA has at all times since March 27, 1972, been the collective bargaining agent for the employees at the Belle Ayr Mine.

XI

The allegations of this paragraph are denied. The UMWA requested AMAX to bargain in a multi-employer group by letter dated November 2, 1974. AMAX, by letter dated November 6, 1974, declined to accept the offer because of the existence of a question concerning representation at the Belle Ayr Mine. By letter dated November 23, 1974, Amax agreed to engage in multi-employer bargaining if its understanding of the UMWA's proposal was as stated therein and if the UMWA would accept the

terms enunciated therein by Amax. The UMWA, through its President Arnold Miller, accepted the Employer's offer to engage in multi-employer bargaining by execution of the November 23 letter, extended the collective bargaining agreement for another thirty days, and thereafter sought to engage in multi-employer bargaining with Amax. When Amax purported to withdraw from the multi-employer group after negotiations had commenced, the Union filed charges against it (Board Case No. 27-CA-4380). That case is now on appeal before the General Counsel of the NLRB.

XII

The Agreement entered into between the Union and Amax on March 27, 1972, was subject to termination upon sixty days' notice at 12:01 a.m., November 12, 1974. Though notice of termination was given to Amax on September 10, 1974, the Union unilaterally agreed to extend the Agreement until December 12, 1974. Thereafter, pursuant to its Letter Agreement with Amax dated November 23, 1974, wherein Amax agreed to multi-employer bargaining, the Union extended the Agreement at the Belle Ayr Mine at 12:01 a.m., January 12, 1975.

XIII

The allegation in this paragraph is admitted.

XIV

It is admitted that a strike commenced at the Belle Ayr Mine of Amax on or about 12:01 a.m., January 12, 1975. The remaining allegations of this paragraph are specifically denied.

XVI

The allegations of paragraph XVI are denied. At all times since mid-1974 and extending through the thirty-day period after notification of termination, the Federal

Mediation and Conciliation Service was fully advised that all UMWA Agreements in the soft coal industry and coal mine construction industry (excepting one Agreement negotiated and executed in the presence of the National Director of FMCS) would expire at 12:01 a.m., November 12, 1974. On September 11, 1974, the Union advised FMCS that it had given notice of termination of its various collective bargaining agreements (some 2,279 such agreements) covering 125,000 employees. On October 17, 1974, the National Director of FMCS was further advised by letter that the Union was continuing to negotiate with the signatories of those various agreements for a successor agreement, but that it had not yet reached agreement with such signatories. Both of these notices were sent within the period defined by Section 8(d)(3) of the Act. Furthermore, FMCS had actual knowledge within the thirty-day period of all the various coal mines, both bituminous and sub-bituminous, to which the UMWA had given notice of termination.

Moreover, the UMWA did more than comply with its statutory duty. By copy of its letter to FMCA dated September 11 and thereafter by letter dated October 17, 1974, the UMWA advised the Department of Labor of the State of Wyoming of the termination of its collective bargaining agreements within that State even though notice to the Department of Labor of the State of Wyoming was unnecessary and not required by the statute in that the State of Wyoming has no "agency established to mediate and conciliate dispute within that State" as required by Section 8(d)(3) of the Act.

XVII

The allegations of this paragraph are denied. The UMWA has since December 19, 1974, engaged in good faith collective bargaining with the multi-employer group of which Amax voluntarily became a member by its letter dated November 23, 1974. On February 23, 1975,

the UMWA entered into a collective bargaining agreement with the members of that multi-employer association. The Union and its Local 1854 further state that:

(a) The Union, its Local 1854, and its member employed at the Belle Ayr Mine has been since 12:01 a.m., January 12, 1975, engaged in a legitimate economic strike against Amax at its Belle Ayr Mine. The Union has not struck to force the Employer to engage in multi-employer bargaining, but has engaged in a strike because of its longstanding tradition and the requirement of its Constitution that where there is no contract, there shall be no work.

(b) Union representatives met with representatives of Amax on January 6 and 7, 1975. After Amax tendered a contract proposal different from the proposal advanced by the multi-employer group of which it became a member, no further meetings were held until February 3, 1975, after the UMWA had reached an impasse with the multi-employer association. The Union believed, at all times prior to February 3, 1975, and continues to believe to date, that Amax had become a member of the multi-employer bargaining association composed of Peabody Coal Company, Kemmerer Coal Company, Energy Fuels, Usibelli and itself.

(c) The Federal Mediation and Conciliation Service has received sufficient, actual notice from the Union regarding the termination of the Union's contract at the Belle Ayr Mine. Even though no notice was required to be sent to any State agency in the State of Wyoming for no such agency exists to mediate and conciliate labor disputes occurring within that State, the Department of Labor of the State of Wyoming was served with a copy of such notice.

(d) While Article I, Enabling Clause, was included in the original contract proposal submitted by the UMWA to Amax, in the form presented in paragraph XVII(d) of the Amended Complaint, the UMWA nego-

tiators consistently expressed a willingness to entertain counterproposals and in fact agreed to totally delete the so-called successorship clause. Moreover, the successorship clause does not violate Section 8(e) of the Act.

(e) While Article II, Section (g) was included in the original contract proposal submitted by the UMWA to Amax in the form presented in paragraph XVII(e) of the Amended Complaint, the UMWA negotiators consistently expressed a willingness to entertain counterproposals. Moreover, the clauses are not union signatory clauses but rather are lawful work preservation and job standards clauses.

(f) While the UMWA has bargained in good faith to obtain Article II, Section (a), Work Jurisdiction, in the form presented in paragraph XVII(f) of the Amended Complaint, the UMWA negotiators continuously expressed a willingness to entertain counterproposals. Moreover, the clause, even when read in conjunction with Article II, Section (g), does not constitute a violation of Section 8(e) of the Act.

(g) While the Coal Lands clause set forth in paragraph XVII(g) of the Amended Complaint comprised Article II, Section (f) of the contract proposal tendered to Amax by the UMWA, the UMWA subsequently agreed to Amax's proposal to delete the clause. Moreover, the coal lands clause is a lawful and mandatory subject of bargaining.

(h) While Article XV, Section (a) was included in the original contract proposal submitted to Amax by the UMWA, the UMWA has consistently expressed a willingness to entertain counterproposals and ultimately agreed to a training committee which would consist of one representative from Amax and one representative from the UMWA. Moreover, the clasue is a mandatory subject of bargaining. Finally, the representatives to the Joint Western Surface Mining Training Committee are not collective bargaining representatives within the meaning of the Act.

(i) Respondents have never conditioned the reaching of an agreement on a contract on Amax's withdrawal of all litigation including the unfair labor practices charged in the instant action or on any part of any litigation whether in the courts or before the Board.

(j) While the UMWA has strongly urged Amax to agree to its proposal regarding Health and Retirement Benefits, Article XVIII, the UMWA's negotiators have been open to the consideration of reasonable alternatives. Moreover, the trustees of the Trust Funds are not collective bargaining representatives whether the meaning of the Act. Amax has unilaterally instituted a pension plan at the Belle Ayr mine which was never discussed with the UMWA.

(k) The UMWA has not engaged in surface or bad faith bargaining at any time. It has always sought diligently to reach and execute a final and binding agreement with Amax and has made many concessions in order to reach that end. To the contrary, Amax has engaged in repeated footdragging including the withdrawal of Articles and clauses already agreed upon, the rejection of its own proposals once the UMWA adopts them, and the making of totally outlandish demands to erode historical employee rights.

XVIII

The allegations of this paragraph are specifically denied.

XIX

The allegations of this paragraph are legal conclusions and are specifically denied.

XX

The allegations of this paragraph are legal conclusions and are specifically denied.

XXI

The allegations of this paragraph are legal conclusions and are specifically denied.

XXII

The allegations of this paragraph are legal conclusions and are specifically denied.

XXIII

The allegations of this paragraph are legal conclusions and are specifically denied.

XXIV

The allegations of this paragraph are legal conclusions and are specifically denied.

XXV

The allegations of this paragraph are legal conclusions and are specifically denied.

WHEREFORE, the United Mine Workers of America, and its Local 1854, respectfully requests that the Amended Consolidated Complaint issued herein be dismissed in its entirety.

Respectfully submitted,

/s/ Ellen P. Chapnick
HARRISON COMBS
ELLEN P. CHAPNICK
900 Fifteenth Street, N.W.
Washington, DC 20005

EDWARD J. SCHEUNEMANN
240 St. Paul Street, Suite 300
Denver, Colorado 80206

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing Answer to Order Consolidating Cases, Amended Complaint and Notice of Hearing As Amended by Amendment to Amended Complaint and Order Rescheduling Hearing were served by first-class mail, postage prepaid, this 2nd day of April 1976, upon:

Daniel F. Greunder
111 West Monroe
Phoenix, Arizona 85003

Terrence L. O'Brien
Omohundro & O'Brien
100 South Main Street
Buffalo, WY 84834

Amax Coal Company
P.O. Box 1890
Gillette, WY 82716

Amax Coal Company
105 South Meridian Street
Indianapolis, IN 46200

/s/ Ellen P. Chapnick

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

MR. FERGUSON: * * *

* * * * *

[47] Q Where is Amax Inc. incorporated?

A New York.

Q What is Amax Coal Company?

A Amax Coal Company is a division of Amax Inc.

Q Where is the principal office of Amax Coal Company?

A Indianapolis, Indiana.

Q What is the business of Amax Coal Company?

A We produce primarily a coal for the steam market.

JUDGE SHAPIRO: For the steel or steam?

THE WITNESS: Steam, electrical power generators.

[48] Q (By Mr. Ferguson) In what states do you operate?

A We mine coal in Indiana, Illinois, Kentucky, and Wyoming.

Q Are you familiar with a mine called the Belle Ayr Mine?

A Yes, I am.

Q Where is it located?

A In Wyoming, Cambell County, about 15 miles out of Gillette, Wyoming.

Q It is owned and operated by Amax?

A Yes, it is.

* * * * *

[53] Q When was that? When did the Belle Ayr Mine first come into operation?

A We shipped the first coal out of Belle Ayre in October of '73, I believe.

Q When did you first go about organizing the mine?

A Pardon me?

Q When did you go about first preparing the mine to begin shipping coal?

A We began early in '71 with the construction and the other activities necessary to get into mining operations.

Q I hand you a document marked General Counsel's Exhibit 4 in evidence, did you participate in the negotiation of that contract?

A No.

JUDGE SHAPIRO: Wait a minute, Joint Exhibit 4, Counsel.

[54] Q (By Mr. Ferguson) Excuse me, I am sorry, Joint Exhibit 4, is that the contract which was in existence until November, 1974, for the Belle Ayr Mine?

A Yes.

MR. GRUENDER: Until when?

THE WITNESS: Until when did you say?

Q (By Mr. Ferguson) I said November of '74. It was extended thereafter, was it not?

A Yes, it was.

* * * * *

[87] Q What did you tell the Union in regard to the pension and welfare trusts at the January 6th meeting?

A First, that we did not see how any of the Belle Ayr employees can benefit from the 1950 pension and benefit trust fund. Secondly, that we were being subject to a trust fund for which the trustees had been selected without any participation from us, and we also asked to see wome of the figures from the trust fund, because we weren't too thrilled with the way that it had been administered either.

Q What else did you state?

A In regard to that?

Q In regard to the pension and welfare trust?

A That's all I can recall at this time.

JUDGE SHAPIRO: Did you say anything about the trustees?

THE WITNESS: Yes, sir, I said they were selected without any participation from us on our part.

Q (By Mr. Ferguson) Did you make any statement as to who had selected those or why were you objecting that they were not selected by you?

[88] A Well, we said they had already been selected as part of the BCOA United Mine Worker negotiations for the bituminous industry. We felt that we should have our own trustees or joint trustees-type situation.

* * * * *

[90] Q Which proposal were you discussing in this meeting on January 7th?

A Well, we started by asking the Mine Workers to give us their response to the questions concerning the legal questions we had raised the night before. They advised that there would be a lawyer at the meeting, and they pointed out a gentleman by the name of Markettei, who represented himself to be a lawyer.

We wanted to talk about the legal points, we wanted to talk about the welfare and pension figures that we had asked about, and the ratification procedure, and that was the agreement that we had when we left the proceeding, cover three points and then get into a discussion of the Company's proposal.

Q Did you explain what legal points you wanted answered? Le me rephrase the question, did you specify the legal points about which you were inquiring?

A We had done that the previous evening.

Q What response was made by the Union at that time?

A Well, at that point in time, Marketti jumped up and asked what we thought we were doing there, and I explained to him that we were there to reach an agreement for our Belle Ayr employees, and he said, "No, you're here for informational purposes only. You are part of the Peabody Group, and you're to be governed by independently, why had they set out negotiation dates

negotiate as part of that group." I said, "Well, why didn't you tell us that last night?" He said, "Well, you took us by surprise when you handed us the proposals." We got into quite—

JUDGE SHAPIRO: No, please tell us to the best of your recollection what was said?

THE WITNESS: Well, I will do my best.

JUDGE SHAPIRO: You can delete any words that you feel are too harsh for this proceeding, but tell us what was said? I take it that Marketti was at the meeting before?

THE WITNESS: No, sir.

JUDGE SHAPIRO: He wasn't? Go ahead.

The WITNESS: Marketti was not at the meeting before, and he appeared at this meeting for the first time with his secretary, and we challenged the use of his secretary taking notes, and they said, well, they would be selective notes. We argued about that for a while, and finally agreed to proceed.

Marketti challenged our right to bargain independently with them, and he said that the Mine Workers did not have authority to bargain with Amax as an independent organization; that we had committed through a letter from our President, Hollie Hopper, to agree to join the Peabody, or the association to get into association [92] bargaining.

We asked him to show us the letter and he said, "Well, it is in Washington."

He advised us that the Mine Workers were requiring one contract covering fifteen different operations in the West; that they expected us to be a part of the Peabody negotiations, and that the meetings of the previous evening and this evening were informational in nature only. We challenged, we explained our visits to the Mine Workers, we explained the letters and telegrams, the whole thing that we had gone through previously. We questioned why if they didn't intend to bargain with us independently, why had they set out negotiations dates and why had they met with us the previous evening.

Anyway, with much back and forth along the same line, we got to a point where we were claiming we were there to bargain, and the Mine Workers said they were there to give us information. So, we caucused, we talked about it a while and came back out and said, "Look, you fellows claim you are here to give us information, and we are here to bargain. Without either side waiving its rights, let's go ahead and proceed and go through the Company's proposal, and you fellows tell us whether you are going to bargain with us." They said, "Well, we will not give you an answer on bargaining right now." [93] They restated their position and said, "We will let you know tomorrow whether we are going to bargain with you."

In fact, we went through the Company's proposal answering a number of questions that they had concerning our proposal as to why we had left certain things in the BCOA agreement and why we had changed the wording; in other words, attempted to explain our proposal.

One of the big questions involved the pension plan that we had proposed and which we had granted benefits equal to or better than we felt the Mine Workers had. There was some challenge why we did not accept the United Mine Workers pension plan. Once again, we told them, first of all, we wanted to negotiate the plan for the benefits, the contribution to support, we felt was our own business. We didn't like the Mine Workers plan because of the fact that we had nothing to say about the selection of trustees; that we were putting money in there to support a program our employees at Belle Ayr, at least part of the program, our employees at Belle Ayr never would participate in. We felt we could administer a pension plan as well as the United Mine Workers could.

We completed our discussions of our proposal, and then we asked the Mine Workers again, "Are you refusing to bargain with us?" "No, we are not refusing to [94] bargain with you," but, they again presented their position and it was agreed that I would contact Mike

Trbovich or he would contact me, I don't remember which, by 10:00 o'clock by the next morning to determine whether or not, in fact, the Mine Workers would, in fact, continue to bargain with us.

* * * * *

[109] Q Was the next meeting between the parties on March 14th?

A That's the next meeting I recall.

Q Did you submit a contract proposal to the Union at that time?

A Yes, we did—I did.

Q Where was this meeting held?

A In Washington, D.C., the office of the United Mine Workers.

Q What was the discussion regarding your proposal at that time?

A Well, we met with Mr. Dan Edelman and a fellow by the name of Jacobsen. Dan Gruender was with me.

JUDGE SHAPIRO: Jacobs or Jacobsen?

[110] THE WITNESS: Jacobsen; is that right?

MS. CHAPNICK: Yes.

THE WITNESS: Dan Gruender was with me. We made arrangements to meet with Mr. Edelman to review a proposal. We told him that the language in this proposal was language either which he had put on the table, the Mine Workers had put on the table, or the BCOA language, or language we had on the table for quite some time. It was our intent to break it down, present it to him, review the proposal, and answer any questions he might have.

We took the proposal in, went over it with Dan point by point.

JUDGE SHAPIRO: Dan?

THE WITNESS: Dan Edelman and Mr. Jacobsen point by point. The questions they had, we attempted to answer. We did give them a response.

We entered into some discussion after we had re-

viewed the proposal as to whether or not it was acceptable. Edelman said there are two things that would be necessary, at least two things: One was a common expiration date and the other was the United Mine Workers health and welfare fund. I asked him if we agreed on everything else except the expiration date, would he find the agreement satisfactory and acceptable.

Q (By Mr. Ferguson) What agreement?

[111] A Our proposal.

Q Thank you.

A Find our proposal acceptable. He said they would expect to hang out a long time just on the expiration date alone. I said, "Will you continue to strike even though we agree to everything except the expiration date?" He said, "Yes, we would not find that proposal acceptable," and we talked further about the health, welfare, pension fund. We explained again that our proposal was directed primarily towards benefits, not the funding of the trust.

He wanted to see our trust documents. We explained to him that we didn't have the trust documents developed because it was impossible to develop a trust document until we could reach some kind of agreement as to what the benefits would be and what the administrative regulations were going to be. It was our intent to do as well or better in terms of benefits for our employees that the Mine Workers welfare fund, and once we had got some agreement with regard to the basics for the than the Mine Workers welfare fund, and once we had

JUDGE SHAPIRO: This is what you told Mr. Edelman?

THE WITNESS: Yes.

JUDGE SHAPIRO: It is Edelman?

THE WITNESS: Yes.

We outlined to him that we were prepared to state there as long as necessary to review the language. He [112] allowed that that wasn't necessary, he would have to have some time.

We reminded him that we had previously had the agreement that our proposals would be a package deal, and a rejection of any part of them constituted a rejection of all of it, which he understood.

We asked him to then give us a response as to whether or not he found the proposal acceptable. He demurred, suggested that he would need some additional time.

Finally, he agreed that he would advise us by 5:00 o'clock, Washington time, on March 17th as to whether or not he found our proposal acceptable. I told him I would be in our Belle Ayr Mine in Gillette, Wyoming, would he please call me by 5:00 o'clock. He agreed, yes, he would.

Again, we told him that if you do not accept this, we will consider it your rejection. He said, "Well, that may not be necessary the way it is."

As we were leaving, Gruender, our attorney, said, "If you don't accept this, we will consider it, we will assume it is rejected." He said, "I don't care what you assume."

* * * * *

[114] Q (By Mr. Ferguson) Following this meeting on the 14th, did you subsequently contact the Union?

A Dan Edelman called me on the 17th.

Q What was that discussion?

A He requested more time to review our proposal. I explained that the language was the same that he had been looking at these three months. He said he would like to have more time to determine, to review the pro-proposal. I asked if they accepted it, and he said no. I asked him if he rejected it, and he said no. I said, "Well, if you don't accept it, we consider it a rejection."

Q As a result of this conversation, did you take any action after that?

A Yes. Following, I guess it was on the 20th, we [115] began to operate our mine with our supervisors, and on the 24th, we invited our employees to return to

work under our new proposal. We had advised the Mine Workers that we were implementing our final offer and we advised our employees that we were going to implement our final offer.

On March 29th, we opened the mine for our employees to return to work.

Q When did you advise the Mine Workers that you were going to implement your offer?

A Oh, I don't remember the exact date. It was shortly after our conversation with Mr. Edelman on the 17th.

Q And that offer that you were implementing was your offer of March 14th?

A Right, effective as of March 14th.

* * * * *

[148] Q I want to refer to your meeting in Washington with Mr. Edelman and Mr. Jacobsen on March 14th. Now, you handed them a proposal and subsequently in your testimony you started talking about this as a final proposal, my [149] question to you, Mr. Payne, is, at this meeting, did you tell Mr. Edelman it was a final proposal?

A Yes.

Q Are you sure?

A Yes.

Q Now, did Mr. Gruender at that meeting, if you can recall—

A Yes.

Q —tell the Union just generally what kind of pension proposals he was proposing with regard to the administrative end of it? Will you tell us about that?

A Mr. Gruender advised the Union that he was, we were prepared to make a pension proposal to the Union that was equal or better than the benefits of the Mine Workers pension plan. There was a question with regard to the trust documents. He advised the Union that we were not prepared to present to the Union the trust docu-

ments in which there had been no agreement as to what sort of administrative rules and regulations, et cetera. There had been no agreement on the plan. It would be impossible to develop a trust document until there had been some sort of agreement on a plan.

Q You generally told them what you offered in this regard?

A Yes.

[150] Q Will you please tell us about that?

A We were prepared to offer 10-year vesting, we were prepared to offer reciprocity with the United Mine Workers pension plan—I take that back, we were prepared to offer reciprocity with the Mine Workers plan, and the immediate vesting in the event reciprocity was not available. We discussed types of trustees, to the best of my recollection. Amax trustees or the possibility of joint trustees. We would track as close as possible administrative provisions of the Mine Workers plan. Our benefits would be equal or exceed those of the Mine Workers.

* * * * *

[183] JUDGE SHAPIRO: The BCOA, is this an employer group?

MR. BANKS: Yes.

JUDGE SHAPIRO: That negotiates for contracts covering a certain group?

MR. SULLEY: Bituminous coal.

JUDGE SHAPIRO: All right; in the Amax mines that are in particular—

MR. GRUENDER: In a different bargaining unit.

JUDGE SHAPIRO: That are in that bargaining unit covered by that; all right, fine.

Q (By Mr. Bank) How long has Amax been a member of the BCOA?

A About five years.

[184] JUDGE SHAPIRO: Will you indicate to me when you come to a break in the subject matter. I assume you still have extensive cross-examination?

MR. BANK: Yes.

JUDGE SHAPIRO: We will recess until tomorrow at that point. How much longer do you have on cross-examination?

MR. BANK: It is hard to tell.

JUDGE SHAPIRO: Well, when you come to a break-off point in the subject matter, we will recess until tomorrow. You should definitely finish this line though.

THE WITNESS: To the best of my recollection, we joined in 1971.

Q (By Mr. Bank) In 1971?

A Yes.

Q And you have been a signatory to the BCOA contract since that time?

A That's correct.

Q Do you know, Mr. Payne, how the trustees for the fund, which was proposed by the United Mine Workers of America, are chosen in the current negotiations for the Belle Ayr Mine?

A I am sorry, I don't understand the question.

Q Do you know how the trustee is chosen, the employer trustee is chosen, for the United Mine Workers health [185] and retirement fund?

A No, I don't specifically know.

Q Does it refresh you recollection if I say isn't it a fact that trustee is chosen on a basis of a vote by the employers which in turn is based on tonnage?

MR. GRUENDER: Objection.

JUDGE SHAPIRO: Overruled.

MR. GRUENDER: Contract provides for that in black and white.

THE WITNESS: I have never really known. I assumed that's what it is.

JUDGE SHAPIRO: This witness is obviously not competent, he has never had any recollection one way or the other on that.

* * * * *

[221] Q Did you attend a meeting with officials of the United Mine Workers and representatives of Amax Coal Company on [222] December 17, 1974, in Washington, D.C.?

A I did.

Q Who was present in that meeting?

A For the Union, Joseph Yablonski, identified as General Consel of the United Mine Workers of America; a Mr. Don Pierce, identified as a Research Assistant for the United Mine Workers of America; and a Mr. H. Elkins Payne, who is Vice President of Administration and Employee Relations of Amax Coal, a Division of Amax Inc.; Mr. John Cairns, Director of Industrial Relations for Amax Coal; and myself.

Q How long did this meeting last?

A To the best of my recollection, about two to two and a half hours.

Q Would you please tell the Court what was said in this meeting and would you please identify the persons speaking?

A Yes, sir. The meeting incidentally was held in the library of the United Mine Workers headquarters in Washington. The meeting was opened by Mr. Payne, when he stated that we were there to set up a procedure whereby Amax Coal could bargain on an individual basis for a new contract at its Belle Ayr Mine; that we wanted to establish appropriate times and places for such meetings, the result of which would be a new contract to replace the one that was to expire after the first of the year for the employees of our Belle Ayr Mine. Mr. Yablonski responded to that [223] statement, to the best of my recollection, by stating that he wondered what the Company's position was in respect to the so-called association.

We then went on to other matters, and these other matters encompassed a wide-ranging discussion of a variety of issues that would be in the bargaining process. These included such matters as the expiration date of a new contract, the coal lands clause, so-called, the health

and welfare trust funds and their applicability or non-applicability, and oh, a number of other matters that would be clearly a matter of bargaining.

I do remember some mention being made of out-contracting problems or subcontracting, as the phrase may be used. I seem to recall my making a statement that on the basis of general knowledge of subcontracting clauses elsewhere in effect with respect to the Mine Workers, that we might find it necessary to send some of our equipment as far away from Gillette as Denver, Colorado, in order to find an UMWA-organized shop.

I paid particular attention personally to the health and welfare funds, and stated that it was our objective to have a pension trust, the benefits of the pension plan would be guaranteed by the terms of the contract, the financing we hoped would be done as is customary, although not entirely the case, in other facilities of the Company whereby we pay [224] monies into a trustee bank, and they are administered and vested and managed by the trustee bank pursuant to a trust agreement with all the fiduciary responsibilities flowing therefrom, and that the benefits to our Belle Ayr employees would be guaranteed by the terms of the plan and backed up by the trust and the funds deposited therein.

There was some discussion of the so-called welfare items, that is to say, hospital, surgical, medical, and other coverages of that kind, and I indicated personally that we had many such plans in Amax, and generally, these were insured with a variety of insurance companies, again with the benefits being guaranteed by the terms of the contract, and the responsibility for providing what ever funding to support those benefits being provided by the Company.

It was a wide-ranging discussion of a variety of issues that would certainly occur in the course of negotiating a new agreement for the Belle Ayre Mine.

Toward the end of the meeting, Mr. Pierce asked for certain data to be provided in respect to the Belle Ayr employees, and of course, we agreed to provide that, such things as birth dates and ages and employment dates and the like; and as the meeting was breaking up, I got Mr. Yablonski's attention, and I said to him personally, "I want to make it absolutely clear that Amax Coal is bargaining separately and [225] individually for a contract for the employees at Belle Ayr, and I want it clearly understood that Amax is not bargaining for Peabody nor is Peabody bargaining for Amax."

Thereupon, the meeting was adjourned with an invitation from Mr. Yablonski that if we would like to say hello to the International President of the Union, Mr. Arnold Miller, he thought that he might be in his office and he could, in fact, arrange it, and this, in fact, happended. It was an informal and casual visit. We shook hands and said hello, and within five minutes were out of his office and on our way.

* * * * *

[278] Q Referring you to Article XX on health and welfare, was there any extended discussion on health and welfare in the meeting on the 7th?

A Yes, there was.

Q And was that more extended than had been entered into on the 6th?

A Oh yes, very much so.

Q And what was that discussion?

A Mr. Gruender handled the discussion for us. Mr. Gruender again explained to the Mine Workers, this was a different group of people who were there then, in detail why it was we were objecting to their insistence upon us accepting the trusts that had been negotiated by the BCOA. He explained in detail why it was that we did not feel bound to contribute [279] to the 1950 health and retirement and benefit trusts; and they got into some discussion about benefits, I believe, because we had our actuary there for the purpose of enabling us to do that.

I am not an attorney, but I do recall that Mr. Gruender laid out chapter and verse to Marketti what our objections to their proposal were and what it was we wanted and why it was we had the right to insist upon our making a separate proposal for the Belle Ayr Mine.

Q Was there any statement by Mr. Gruender in regard to the trustees of the proposed trust?

A Yes, there was.

Q What was that?

A Mr. Gruender told Jim Marketti and the rest of the people there in that room that we had the right, words to the effect that we had the right to select our own representatives for any health and retirement plan which was funded for the welfare employees; that the Mine Workers did not have the right to insist that we accept the representatives selected by other people, namely BCOA.

Q In this meeting on January 7th, was there any discussion between the parties in regard to the Employer's position that it was bargaining independently?

A Oh, yeah. There was a lot of discussion about that.

Q What was the Union's position?

[280] A The Union's position voiced by Jim Marketti was that we were only present for the purpose of giving and receiving information; that we were going to live with whatever it was that the Peabody group agreed upon with the Mine Workers, and we didn't necessarily have to like it, but that was the way the cows were going to eat the cabbage.

JUDGE SHAPIRO: That's the way the cows—

THE WITNESS: That's just my paraphrase. He told us in clear and unequivocal terms that we were going to have to live with what Peabody agreed with. We had no other rights but just to live with that.

Q (By Mr. Ferguson) Was this stated more than once?

A Oh yes.

* * * * *

[430] Q Let me simplify it and break it down, I am sorry. It is not your testimony, is it, that Danny Edelman's reservations about your proposal on health and welfare were limited solely to the fact that your proposal was not consistent with the provisions of the United Mine Workers health and retirement fund?

JUDGE SHAPIRO: One reason that Edelman gave for not [431] liking your proposal was that it was not similar to what?

MR. BANK: The United Mine Workers health and retirement.

JUDGE SHAPIRO: Is that true, that is one of the reasons Edelman gave, answer that yes or no? The reason he didn't like your proposal, it wasn't similar to that other plan, and he gave that as a reason?

THE WITNESS: He gave me that as a reason.

JUDGE SHAPIRO: Was that the only reason he gave, or did he give other reasons for not liking your proposal?

THE WITNESS: Yeah, I think I recall he gave another reason.

JUDGE SHAPIRO: Go ahead.

Q (By Mr. Bank) He didn't like the concept of a unitary trustee, did he?

A No, he didn't.

Q He did not like the fact that reciprocity was not guaranteed, did he?

A The reason I am hesitating, those were not the words that he used.

Q We are talking about concepts here.

MR. SULLEY: Objection, I am not talking about concepts, I want to hear what happened at these meetings.

JUDGE SHAPIRO: Overruled.

A (By the Witness) My best recollection is that he did [432] not like the idea of reciprocity.

• • • • •

[444] Q It has been testified to here before that Amax is a member of the BCOA, correct?

A That is true.

Q In fact, Amax is represented on BCOA's highest body, I am not sure whether it is called the executive committee or the executive council, by Mr. Sonnemann; is that correct?

A That's accurate.

Q And has been for how long?

A I don't know, I can't tell you, at least during the time I have been working for this Division, a year and a half.

* * * * *

[590] Q (By Ms. Chapnick) When negotiations began for a sub-bituminous and lignite agreement in the West, with which companies did the United Mine Workers commence bargaining independently?

A Consolidation Coal, North American, Coal Corporation involving its Indianhead Mine, Pittsburg & Midway Coal Company involving its Edna and McKinley Mine, two divisions of Peter Kiewit known as the Big Horn Coal Company and the other known as the Rosebud Coal Sales. Those were the companies that, I think that's all of them that we bargained with independently.

Q Prior to the beginning of negotiations for a [591] sub-bituminous and lignite agreement, was any action taken by the UMWA regarding the termination of the 1971 agreement covering those mines?

A All the companies that had been signatory to the 1971 sub-bituminous and lignite agreement received 60 days extension instead of their contracts expiring at 12:01 a.m., November 12th, and they would expire at 12:01 a.m., January 12, 1975.

* * * * *

[601] There was a large segment of the meeting which was consumed by discussions with Mr. Sonnemann respecting his background. If I am not mistaken, he had

joined Amax a year or so in advance of 1974 bargaining. He explained his background. He explained his participation in bituminous bargaining; that he had been on the steering committee; and he claimed during the course of that meeting a great deal of credit for the restructuring of the pension plan in accordance with ERISA, and otherwise indicating his responsibility for the progressive reforms that had been adopted in the 1974 Bituminous Coal Wage Agreement.

If I might, Mr. Sonnemann, it was my understanding at that meeting, told us that he was on the BCOA steering committee, or was something to that nature. It was a group that was basically in the back room. They were not present at the bargaining table. But, they were the biggest representative of the coal industry that reviewed and approved various movements that were made by the industry [602] in the course of those negotiations. I think it was called a steering committee. To a great extent, he amplified on the things that he had done in the course of that bargaining.

* * * * *

[623] Q With respect to Amax, what happened next?

A Sometime during the week of January 20th, I received a call from the Denver Region of the NLRB advising us that they anticipated issuing a Compaint against the UMWA based upon the Amax charges, and that they were simultaneously determining not to issue a Complaint based on the 8(a)(5) charges filed against Amax by the UMWA.

Q What did you do in response to this telephone call?

A I inquired about the possibility of settling, and whether the Board had abandoned its policy of attempting to seek a settlement prior to issuance of a Complaint.

It was right about this time, it was during this week that, I think, in discussions with Mr. Gillis, who is the Regional Attorney, indicated that the only settlement

the Board would accept would be a return to work by the men at Belle Ayr. I informed Mr. Gillis that I did not believe that we could settle on that basis.

We then had a discussion about whether or not the Union would agree to meet with Amax. I recall during the course of that week preparing a letter to the Denver Region, I think Mr. Gillis, with respect to the 8(d)(3) aspects of the, I believe it was the amended charge filed by Mr. Gruender.

[624] I had discussions in person with Mr. Nash, the General Counsel of the Board at that time. If I am not mistaken, I went over to the Board's offices in Washington. I think that Mr. Gruender had already been there or had discussed the matter with someone in the General Counsel's office, and as a matter of policy, they invited the opposing parties in. In any event, I did have discussions with Mr. Brisman and Mr. Nash. I believe that we had obtained the commitment of the Board that they would not seek injunctive relief.

I am not sure if it was at that time or at sometime later, in any event, I believe it was as a result of my discussions with Washington, which were thereafter relayed through the Denver Region, that Mr. Gillis sugguested that one way for use to avoid issuance of a Complaint—maybe the Complaint had been issued—avoid an injunction being issued against us would be to agree to bargaining independently with Amax. I discussed with Mr. Gillis at that time, Mr. Gillis kept using the words that we had to bargain with Amax for the Belle Ayr Mine only.

In the course of my discussions, I informed Mr. Gillis that the Mine Workers had had a provision in their agreement known as the coal lands clause for—

* * * * *

[626] Q (By Ms. Chapnick) Did Mr. Gillis tell you what his problem with the first telegram was?

A As I recall, he said that it did not clearly enough state that we would bargain independently with Amax for the Belle Ayr Mine.

JUDGE SHAPIRO: I must agree with Mr. Gillis. He was worried about the first part, about the impasse. All right.

MR. GRUENDER: We agreed with Mr. Gillis too.

JUDGE SHAPIRO: Mr. Gillis in the impression that I get, you weren't agreeing with the General Counsel's position, still this was an exception to the multiemployer group rule. Since you reached an impasse, you were privileged to bargain on an individual basis. He wanted more of a commitment; am I correct?

THE WITNESS: Well, he didn't express it exactly that way. He said he wanted the telegram to specify that we would bargain independently with Amax. I don't recall he said take out the language about impasse.

JUDGE SHAPIRO: But, the long and short of it is that the history of these telegrams is based on these conversations you had with the Board?

[627] THE WITNESS: Mr. Gillis was insisting that we send them.

* * * * *

[679] THE WITNESS: I recall Mr. Sonnemann taking exceptions, stating Amax had offered the UMWA a good benefit program in place of our health and retirement proposal. I recall, it might have been Mr. Payne saying that he did not understand why we were worried about anything other than what the employees might get, and I indicated we felt very strongly that the UMWA as the bargaining representative had a strong interest in the nature of whatever pension system should be developed, and the administration of that pension system.

I stated that we had never agreed to a pension system other than a 302(e)(5) type pension plan with tripartite administration and Union involvement in its administration; that in only one instance apart from the bituminous pension plan which had encompassed bitu-

and sub-bituminous [680] miners had the UMWA ever agreed to another 302(e)(5), that was the anthracite, and that the anthracite fund had come one very hard times and was nearly bankrupt and was very reluctant to enter into any agreement that did not provide the security of numbers that the multiemployer plan provided.

There was some discussion with respect to—just a second.

(Pause.)

I am quite certain that at that meeting, I indicated to the mediator—

JUDGE SHAPIRO: In the presence of the—

THE WITNESS: In the presence of Mr. Sonnemann and Mr. Payne that our position with respect to the pension proposal we had made with respect to Belle Ayr was eminently fair; that the agreement that had just concluded had provided for the payment of 20 cents per ton on each ton of coal mined at Belle Ayr; that at Belle Ayr, they were mining according to our figures 188 tons per man shift, or $36.70 a day in contributions which were made under the '71 contract; that our proposal that was on the table with Amax as of that meeting provided for the payment of 90 cents per hour, or $7.20 per day, a net savings to the company of $29.00 per employee.

Again, I think it was Mr. Payne that indicated that these were not things that should bother the UMWA, what the [681] costs were, what the administration was. We should only be interested in what the benefits were, and their last proposal was at that time just simply spelled out the benefits, and nothing else with respect to funding, structure, or administration, or anything of that nature.

I think probably the greatest part of the meeting was taken up discussing pension and economics.

* * * * *

[863] Q Is the United Mine Workers operating a retirment fund that is commonly known as a 302(c)(5) trust?

A Yes, it is.

Q Did you have any discussions with Mr. Cairns and Mr. Steinbeck on the relative merits approach on administration?

A Yes, we did. As I recall, it was initiated when I asked Mr. Cairns whether they were proposing a 302(c)(5) tripartite trust or an employer, administered plan and I think he indicated at that point that he really didn't know what the 302(c)(5) plan was, that's what he said. I explained and said that was the approach we favored and that the interest of the beneficiaries that the Union was representing would be better protected if there was a Union appointed trustee there along with the other trustees to look out for the interests of the beneficiaries.

Q In addition to the discussions which you had, were there any proposals exchanged?

A It was at this meeting that I tendered to Mr. Cairns a copy of the Western Surface Coal Wage Agreement and indicated that that embodied our proposal to Amax to consider as an amended proposal.

* * * * *

JOINT EXHIBIT 1(r)

W U

western union Mailgram

[Received Nov. 12, 1974, W.H. Hopper]

MGMINDT HS
2-012110E314 11/10/74
ICS IPMMTZZ CSP
2027372628 MGM TDMT WASHINGTON DC 100 11-10 040 6P EST ZIP

W HOLLIE HOPPER, PRESIDENT CARE AMAX COAL CO
105 SOUTH MERIDIAN ST
INDIANAPOLIS IN 46225

UMWA UNILATERALLY AGREES TO EXTEND CURRENT COLLECTIVE BARGAINING AGREEMENT COVERING YOUR BELLE AYR MINE TO 12:01 AM, DECEMBER 12, 1975.
ARNOLD MILLER PRESIDENT UNITED MINE WORKERS OF AMERICA 900 15 STREET NORTHWEST WASHINGTON DC 20005

16:06 EDT

MGMINDT HSB

To Mr. Samo
Date ——— Time ——

While You Were Out . . .

Message for Hopper

Mr Karin Fizer
Of
Phone 202-638-0530

☒ Telephoned

Message Mail-O-Gram from Arnold Miller "UMWA unilaterally agrees to extend current bargain agreement covering your Bell Ayr Mine to 12:01 AM Dec 12, 1974 not 1974 as gram reads

JOINT EXHIBIT 1(aa)

January 9, 1975

Mr. Joseph Yablonski
General Council
United Mine Workers of America
% Holiday Inn Downtown
Denver, Colorado

Dear Mr. Yablonski:

Your letter of January 8, 1975 disturbs me for several reasons. First, both you and your organization know that Amax Coal Company desired and intended to bargain independently from the outset. It was only after your organization threatened our organization with a work stoppage by our employees (the usually inevitable effect of your refusal to extend your agreement) that Amax Coal Company agreed to consider participation in group bargaining, but then only under certain conditions that were accepted by your organization.

One of the conditions was that bargaining commence in "late November." Your organization refused to permit bargaining to commence in late November and so you are responsible for that condition not being met.

Another was that if any agreement was reached, it would only cover our Belle Ayr Mine. By your organization's proposals and statements to us and other companies, you have made it clear your organization plans to extend the agreement to all sub-bituminous mines a company may now have as well as those that develop in the future. This is contrary to our agreement and is another condition that is not met.

Another condition was that we did not prejudice our rights to bargain independently at any time in the future if we were unable to agree upon or make suitable arrangements with the designated industry representative as to how or what they would do to represent our company.

We pointed out to you we did not expect the other company to enthusiastically represent our company interest in these negotiations. We believed it might not even be in their best interest to do so. We feared significant conflict of interest might arise that could prevent the other company from fairly representing our company and our employees' interest in bargaining.

Those conflicts have now surfaced and apart from anything else that is happening or has happened, we believe you organization's efforts to refuse to bargain with us and to belatedly attempt to force us into being represented by an organization or group with whom it is now apparent (particularly with respect to your health and welfare pension proposals) that we have a clear conflict of interest. We think that is also unlawful.

It is also our belief that your organization's efforts to force us to accept what the industry representative may agree to will force us to do something which it would be unlawful for you to insist we do if you were to demand the same for Amax Coal Company directly. We believe that is evidence of bad faith and unlawful.

What you say in your letter about our December 17, 1974 meeting is not true. On December 17 and before, we clearly stated to you our intent to not engage in joint bargaining and to bargain for ourselves.

We wanted to bargain with you for our employees and to reach an agreement. We are confident we can. We urge you to stop making unlawful efforts to avoid your obligation to bargain and discuss with us the terms of a new agreement for our employees, yours and our mutual benefit.

We continue to be available to meet with your organization. Please call to arrange suitable meeting times.

Sincerely,

H.E. Payne, Jr.

JOINT EXHIBIT 1(gg)

AMAX CO IND
642P EST JAN 30
WUH059
IDB211(1004)(1-031653C030)PD 01/30/75 1645
TWX UMWA WASH
001 WASH DC 1 30 75
PMS MR. H. ELKINS PAYNE
AMAX COAL COMPANY
105 MERIDIAN
INDIANAPOLIS, INDIANA

DEAR MR. PAYNE:

THIS TELEGRAM SUPERCEDES OUR TELEGRAMS DATED JANUARY 24 AND JANUARY 29, 1975, PREVIOUSLY SENT TO AMAX. THIS IS TO MAKE CLEAR THAT WE OFFER UNEQUIVOCALLY TO BARGAIN WITH AMAX INDIVIDUALLY CONCERNING THE CERTIFIED UNIT OF AMAX EMPLOYEES AT ITS BELLE AYR MINE. WE ARE PREPARED TO MEET WITH YOU TO BARGAIN ON THIS BASIS ON MONDAY, FEBRUARY 3, 1975, IN DENVER, COLORADO. WE DO INTEND TO APPEAL THE REGIONAL DIRECTOR'S DISMISSAL OF OUR SECTION 8(A)(B) UNFAIR LABOR PRACTICE CHARGE IN CASE NO. 27-CA-4380.

JOSEPH A. YABLONSKI
GENERAL COUNSEL

NNNN

JOINT EXHIBIT 1(kk)

W U

western union Mailgram

MGMPHXC PHX
2-043755E076002 03/17/75
ICS IPMRNCZ CSP
1 6022575513 MGM TDRN PHOENIX AZ 03-17-75
ZIP 85003

SHIMMEL HILL BISHOP AND GRUENDER
111 WEST MONROE
PHOENIX AZ 85003

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

6022575513 TDRN PHOENIX AZ 93 03-17 0603P EST
PMS JOSEPH YABLONSKI, UNITED MINE WORKERS OF AMERICA, DLR
900 15 ST NORTHWEST
WASHINGTON DC 20005

OUR CLIENT AMAX COAL COMPANY ADVISES THAT THE UMWA REPRESENTATIVE HAS NOTIFIED THEM THAT THE COMPANIES MARCH 14 1975 FINAL PROPOSAL IS NOT ACCEPTABLE AND THEREFORE UNDER THE PROCEDURES RE PACKAGE PROPOSALS SET BY THE PARTIES IS REJECTED SINCE THE UMWA AND OUR CLIENT ARE AT LOGGERHEADS ON SO MANY ISSUES INCLUDING THE TERMINATION DATE, IT APPEARS THAT THERE IS AN IMPASS. IN VIEW OF THAT, OUR CLIENT HAS DECIDED TO PUT ITS FINAL OFFER, AS REJECTED BY YOU, INTO EFFECT

EFFECTIVE MARCH 14 1975 AS PROPOSED IN THEIR FINAL OFFER
DANIEL F. GRUENDER COUNSEL FOR AMAX COAL CO

1849 EST

MGMPHXC PHX

JOINT EXHIBIT 1(mm)

[Apr. 11. 1975]

W U

western union Mailgram

MGMPHXT HSB
2-043741E100002 04/10/75
ICS IPMRNCZ CSP
1 6022575513 MGM TDRN PHOENIX AZ 04-10 0647 P EST
ZIP 85003

Op. 149; Sent 4:35 4/10/75; TMB
cc: Elkins Payne

SHIMMEL HILL BISHOP AND GRUNDER TMB
111 WEST MONROE
PHOENIX AZ 85003

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

6022575513 TDRN PHOENIX AZ 257 04-10 0647P EST
PMS JOSEPH A. YABLONSKI, UNITED MINE WORKERS, DLR
900 15 ST
WASHINGTON DC 20005

RE YOUR TELEGRAM OF MARCH 18 TO ME ON AMAX COAL COMPANY BARGAINING. EDELMAN AND YOU IN ERROR AFTER ATTEMPT AT FURTHER STALLING EDELMAN REJECTED AMAX'S FINAL OFFER ON MARCH 17. UMW'S CLAIMED GOOD FAITH CONSIDERATION OF SUCH OFFER IS RIDICULOUS IN VIEW OF UMW'S REFUSAL TO EVEN SINCERELY BARGAIN WITH

AMAX ON INDIVIDUAL BASIS, GOOD FAITH BARGAINING DOES NOT REQUIRE MARATHON ENDLESS AND FRUITLESS DISCUSSION. THERE COMES A TIME WHEN IT IS PROPER TO EXPECT SOME DECISION BE MADE, YOUR ORGANIZATION HAD OUR CLIENTS PROPOSAL FOR BETTER THAN A WEEK BEFORE YOU SENT YOUR TELEGRAM AND IN THE TELEGRAM YOU STILL ARE CLAIMING YOU WERE CONSIDERING IT. UMW'S HISTORIC INFLEXIBLE AND INTRANSIGENT INSISTENCE ON SO CALLED INDUSTRY AGREEMENT WITHOUT VARIATION EXPOSES UMW'S ALLEGED "CONSIDERATION" AS SHAM. OUR CLIENT CAN'T UNDERSTAND WHY YOU ARE CLAIMING THERE IS ANYTHING WRONG WITH ITS PUTTING ITS FINAL PROPOSAL WHICH YOU REJECTED INTO EFFECT, AFTER ALL YOU HAD OUR CLIENTS EMPLOYEES "RATIFY" A CONTRACT THAT DOES NOT EVEN APPLY TO OR COVER THEM EVEN BEFORE YOU HAD REACHED ANY UNDERSTANDING WITH OUR CLIENT IF YOU WERE SINCERE ABOUT BARGAINING IN GOOD FAITH INSTEAD OF GIVING LIP SERVICE TO YOUR DUTY BY BARGAINING BY ACCUSATION YOU COULD TAKE YOUR TONGUES OUT OF YOUR CHEEKS AND PUT YOUR MONEY WHERE YOUR MOUTH IS AND BY ACTION CONFIRM WHAT YOU CLAIM YOU HAVEN'T HAD TIME TO DO YET; NAMELY, NOTIFY OUR CLIENT WHETHER YOU ARE NOW WILLING TO ACCEPT ITS FINAL OFFER IN ACCORDANCE WITH THE RULES YOU SET DOWN WHEN MEETINGS BEGAN.

DANIEL F GRUNDER
COUNSEL FOR AMAX COAL CO

18:48 EST

MGMPHXT HSB

JOINT EXHIBIT 1(nn)

WU

PFA 203(1627)(1-035713CIU)PD 04/11/75 1625

WESTERN UNION Telegram
TWX UMWA WASH
001 WASH DC 4 11 75
PMS MR. DANIEL F. GRUENDER
111 WEST MONROE ST
PHOENIX, ARIZONA 85003

THIS IS IN ANSWER TO YOUR TELEGRAM TO ME OF APRIL 10. UMWA REJECTS AMAX LAST OFFER. UMWA'S LAST OFFER STANDS WITH THE FOLLOWING EXCEPTIONS: IMMEDIATE REINSTATEMENT OF ALL EMPLOYEES; INCREASE OF CATCH-UP ALLOWANCE TO $500; DISMISSAL OF ALL LITIGATION.

JOSEPH A. YABLONSKI
NNNN

JOINT EXHIBIT 1(ggg)

UNITED MINE WORKERS OF AMERICA

[SEAL]

UNITED MINE WORKERS' BUILDING
400 Fifteenth Street, N.W.
Washington, D.C. 20005

March 4, 1976

Mr. John S. Cairns, Director
Industrial Relations
AMAX Coal Company
105 South Meridian Street
Indianapolis, Indiana 46225

Dear Mr. Cairns:

The enclosed letter from UMWA Trustee Harry Huge on the subject of reciprocity between the single mine pension plan at Belle Ayr and the United Mine Workers of America Health and Retirement Funds is self-explanatory.

Since he speaks for the other two trustees, any further consideration of reciprocity, especially in view of the BCOA's views on this matter, would be futile. Accordingly, in light of the UMWA's strongly held views on the advantages of portability for Belle Ayr employees, we reject your current pension and health proposals. This is not to say that we have no quarrel with other aspects of your plans, because we have many, and have expressed them many times. It is only to say that the impossibility

of reciprocity makes any discussions here of our reservations unnecessary.

Very truly yours,

/s/ Mike Trbovich
MIKE TRBOVICH
Vice President

Enclosure

CC: Rick Bank
Rich Trumka
Mick Halamandaris
Bill Hurtado
Frank Stevenson
Dell Brownfield

UNITED MINE WORKERS OF AMERICA
HEALTH AND RETIREMENT FUNDS
2940 K Street, Northwest
Washington, D.C.

February 23, 1976

Mr. Richard M. Bank
Executive Assistant
to President Miller
United Mine Workers of America
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Bank:

This is in response to your verbal request as to whether the Trustees of the United Mine Workers Health & Retirement Funds would consider granting reciprocity for pension credit for participants of another plan.

I have had an opportunity to discuss this with the other two Trustees of the UMWA Health & Retirement Funds, and we all three are in agreement that we could not alter the Plan to grant recoprocity for pension credit as you have outlined to us. There would have to be an amendment to the Plans in order for the agreement as outlined to us to be instituted. Such an amendment, of course, can only be done by the settlors of the Funds.

Cordially

/s/ Harry Huge
HARRY HUGE

cc: C.W. Davis, Trustee
Paul Dean, Trustee

JOINT EXHIBIT 1(kkk)

AMAX COAL COMPANY

105 South Meridian Street, Indianapolis, Indiana 46225
[317] 266-2626

June 9, 1976

Mr. Arnold Miller, President
Mr. Mike Trbovich, Vice President
Mr. Harry Patrick, Secretary-Treasurer
UNITED MINE WORKERS OF AMERICA
United Mine Workers Building
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Gentlemen:

Your letter of March 15, 1976, to Hollie Hopper, has been referred to me for response.

You stated your purpose in writing the letter was to make it clear that the failure to reach agreement at Belle Ayr was the fault of the company negotiators, not the union's and the company negotiators did not want an agreement. In an effort to set the record straight and provide you with the response Mr. Hopper promised in his letter of March 23, 1976 and without going into all of the bargaining history, the following general points are offered.

Amax has always sought to take whatever reasonable steps were necessary and appropriate to reach agreement with UMWA at Belle Ayr consistent with the law. We have resisted ambiguous language or unlawful clauses or those that didn't accommodate to the needs of the Belle Ayr Mine. However, we have made concessions in order to accommodate UMWA's wishes even though we felt it was probably misleading to employees. For example, notwithstanding that Wyoming is a right-to-work state and no company can enter into a union security agreement

with the union and still comply with the law, we agreed to insert UMWA demanded language which will mislead employees into believing that they have to join the union in order to continue working. For most employees who do not know the law, including a phrase "to the extent required by law" does not inform them of anything or cancel out the effect of the other language that clearly requires them to join the union.

We do not know what you believe an "optimum" contract includes but its been our experience that few parties to any negotiations get everything they want. Our proposals also hardly can be described as a "sweetheart" contract, particularly when they meet your wage demands and contain many language concessions and benefits such as pensions that exceed your proposals.

Your description of the course of bargaining is inaccurate because aside from reciting things that did not happen, it also omits that which did happen.

We came to the bargaining table in the latter days of 1974 and the first week in January, 1975 and have tried to compromise and reach agreement. After a formal exchange ofproposals on January 6th, and after discussing the terms and the reasons for the proposals and language, we were then faced with uniform intransigence, insulting conduct and treatment and refusals to meet by representatives of the Mine Workers. We were forced to go to the extent of filing an unfair labor practice charge and even then the UMWA would not meet with us until the National Labor Relations Board representatives threatened to seek a 10(j) injunction unless the UMWA agreed to do so in late January and the early part of February, 1975. Prior to that your organization broke off negotiations with us and called an untimely and unlawful strike which continues to this very day. Also, from the outset of negotiations we have been confronted with no less than five separate bargaining teams from your organization which has required that with each team our bargaining started all over. A good case in point is

that by the time your last bargaining team came on the scene in late 1975, the National Labor Relations Board had long since issued a complaint against the Mine Workers for its bad faith bargaining.

Our problems with UMWA commenced when your negotiators started insisting that we were bound to abide by whatever other industry negotiators agreed to and we note that your organization is still maintaining that position and has not relinquished it.

After trying futilely to work out some agreement with the UMWA in February, this company made a final proposal on March 14, 1975 and arranged a meeting with UMWA representatives in Washington to explain it. Our representatives asked for a prompt response and were assured that they could get one at the close of business the following Monday. They were reminded that the original ground rules, agreed to by the parties, were that proposals were to be "package" proposals and, if they were not all accepted then they were all considered rejected. On the following Monday our company was informed that the proposal was not going to be accepted. In view of the rejection of that proposal, a rejection which was again confirmed later, Amax thereafter put that final proposal into effect. At about the same time the United Mine Workers of America embarked upon a course of, what we consider to be improper activities, including a massive propaganda barrage, by-passing of our designated bargaining representatives, continuing insistence on non-mandatory and unlawful clauses, insistence that we give up rights to designate who our representatives will be for bargaining about the all-important terms and conditions of employment such as pensions, health insurance and training, filing unsupported charges with the U.S. Attorney, threatening and engaging in unilateral action and work stoppages in the mid-west, attempting to blackmail Amax by offering to not file charges alleging improprieties with the F.T.C. Commission nor the I.C.C. Commission if Amax would agree to

UMWA's demands, engaged in efforts to disrupt stockholder meetings, picketing the headquarters of Amax Coal Company in Indianapolis, attempting to implicate company representatives in contrived and false claims of improper payments to union representatives and raising constant threats of waging a "Duke Power" campaign against Amax.

The UMWA's position on contract terms, was virtually unchanged from December of 1974 to late June or July, 1975. At that time, under pressure from unfair labor practice charges and complaints issued by the National Labor Relations Board, the UMWA made some minor concessions; all the while conducting your massive propaganda barrage in efforts to bypass company negotiators by making direct appeals to the Board of Directors and even threatening to picket them individually. Accompanying the new proposal was a letter of explanation which was inconsistent with the proposal. In exploring the differences in Washington with Mr. Yablonski, he then advised to disregard the letter of explanation.

In the July meeting in Washington, before the Federal Mediator, with UMWA's representative, Yablonski, Amax's negotiators again went over proposals made by the UMWA giving their opinions and views on contractual issues on which the parties were at odds. Additional meetings, including detailed discussions, were conducted with Mr. Yablonski, UMWA's then sole negotiator, in Louisville. Thereafter, Mr. Yablonski left the United Mine Workers. Apparently it was known to you that he was leaving before he was sent to bargain with Amax in July and August of 1975.

Thereafter UMWA sought no additional meetings even though we had made various proposals to your representative on which we were to receive a response.

Meanwhile, the Mine Workers continued their efforts to harass the company by supporting false rumors in the press about Amax and its operations, threatening to create trouble in their foreign holdings and alleging im-

proprieties by company representatives without support in the facts or without ever backing up such inaccurate claims.

Thereafter UMWA again switched negotiators on the company and starting on October 9, 1975, the company once again was compelled to go over and recount all past negotiations for approximately the fifth time. On top of this, UMWA's negotiators claimed to have a lack of knowledge of past discussions and detailed objections to UMWA's proposals which were given in detail in December, 1974, January, February, July and August of 1975.

You noted that complete packages of proposals were exchanged several times without much progress. We received the union's original proposal and thereafter until July 1, 1975, the UMWA would not change their proposals except where the Peabody group had come to agreement on a particular provision. Amax did submit package proposals at the early stages but were never able to get meaningful response from the UMWA negotiations except they were disregarded or UMWA claimed that Amax was bound by what the Peabody group negotiated. In subsequent meetings in ensuing months, Amax made other proposals. After the Amax final proposal was put into effect, Amax made specific oral proposals, particularly in the July and August meetings. Some of them are also in writing.

In October, 1975, as previously stated, Amax, at the request of UMWA, began all over again and reviewed past negotiations for your new negotiating team, including our objections to many of the proposals previously rejected by UMWA. Thereafter on or about November 14, 1975, UMWA sent another counter-proposal to Amax. This proposal was again accompanied by a letter of explanation, which, in some areas was ambiguous when contrasted with the proposals, and in other areas, was not consistent with the proposals. The November 14,

1975 proposal by the UMWA still retained a number of the illegal provisions which Amax had repeatedly informed UMWA negotiating teams it could not concede.

Further explanations of the parties' positions were made in Washington, D.C. in November, 1975.

At Salt Lake in December, 1975, we again met and as previously discussed with UMWA representatives, brought in a number of counter-proposals which, in some instances, we felt we would rather not make; for example, in the sub-contracting area, but which we felt would provide common ground for some agreement or compromise. At that time we informed you that we did not intend to give up or waive our legal rights and objections to your or our proposals on these issues simply because we were willing to bargain about possible areas of agreement. It may not have been necessary to have stated this since everybody understood that all proposals were made as package proposals and that either the entire proposal was accepted or none of it was considered accepted. The parties always recognized each others rights to change proposals or submit new ones when prompted by legitimate economic reasons and not with an unlawful purpose as bargaining progressed.

When we met in Salt Lake we presented our proposals on December 7th. On the morning of December 8th, before we had completed submitting all of our proposals, your negotiators indicated that they did not want to respond to our proposals but wanted to take our proposals home with them to study them first. Your negotiators, at that time, informed our bargaining committee that you had some other pressing business.

We are surprised that it is the feeling of your negotiators that we made no attempt to meet their needs. We are also surprised that they felt that they had attempted to meet ours. We felt exactly the opposite. For example, after we explained the importance to the company of trying to obtain some kind of relief on the seven day work restrictions in the agreement in Salt Lake, we felt that

your negotiators were sympathetic to our problems and willing to work out some kind of a solution. In Chicago in February, your negotiators flatly told us that they did not believe we had any justification for our request for some relief on those restrictions and they would not do anything unless we documented all of our needs in writing. This dashed our hops and once again it became apparent to us that UMWA was not going to respond in kind to our conciliatory advances.

In our February 1979 meeting UMWA's representatives rejected the counter-proposals which we had made, in an effort to accommodate to their claimed needs and agreed only to a few technical minor matters which had been pending for many months.

The February, 1976 meetings in Chicago were arranged, in part, to permit your negotiators to respond to the proposals we made in Salt Lake in December. The delay was in part caused by the filing of a petition by a majority of employees at the Belle Ayr Mine, who had joined a new union called NEW ACME, who, in turn, claimed and presented evidence to the company that they represented an overwhelming majority of the employees. A petition for election was filed with the NLRB in Case No. 27-RC-5198 at or about the time we were meeting in Salt Lake. Thereafter, that petition was administratively dismissed by the Denver Region allegedly because of the fact that there was a meritorious refusal to bargain charge pending against the United Mine Workers and one against the company that had been dismissed by the Region.

Notwithstanding that petition and presentation to us of a majority interest in another union, we bent over backwards and arranged to meet with you on February 17th and 18th in Chicago.

Our hopes were dashed when you commenced those meetings by telling us that your review of our proposals showed that there had been no movement at all. A long time prior to the February 17, 1976 meetings, on numer-

ous occasions, Amax had made considerable movement and considerable concessions. We had reiterated and re-explained to various UMWA negotiating teams, for example, that we did not wish to waive our legal objections to extra-unit and pre-hire problems contained in your Enabling Clause. In the February 18th meeting UMWA finally agreed to sign off four items which had been pending for a considerable period of time but basically you stuck by your November 14, 1975 proposal. At the February, 1976 session you finally agreed to sign off on the language we proposed to eliminate the ambiguity in the clothing allowance language, signed off on the safety language which included *our* inclusion of the word "hard hats" and our concession to agree to "ear plugs" rather than "ear protection" and you signed off on Article III (C) (4) and (5). In addition a language clarification to avoid pyramiding of overtime on holidays occurring during vacation periods was signed off, as well as your concession not to require our training program to be controlled by the Peabody group "Joint Training Committee."

Our proposal on the Enabling Clause, from the outset, has included some management rights language, language proposed in an effort to avoid the extra bargaining unit and pre-hire problems, omission of your all inclusive language contained in that clause regarding union recognition. We have never gone along with your idea that we can be compelled to bargain about what the scope of the bargain unit is going to be, particularly in view of the Board certification. We believe that is something for the Labor Board to determine and we further believe that new units and their employees should be free to make their own choice of bargaining representatives and engage in collective bargaining as they see fit without being foreclosed by the company with representatives they did not select.

In your letter you remark that in inserting the union's security language we merely reinserted a clause which

had been in every previous Amax contract with the United Mine Workers both in the east and the west. You should bear in mind that Amax, itself, has never, prior to the current Belle Ayr negotiations, had an opportunity to "negotiate" individually an agreement with United Mine Workers. They have been bound by the BCOA negotiated Association Agreement for the bituminous coal operations in the east and Amax's separate sub-bituminous contract with UMWA was simply executed in 1972 without any negotiations whatsoever and merely signed up since it was in the middle of a contract term, fully expecting to have an opportunity to negotiate a contract to meet the needs of the west, after the mine was operating. The UMWA representatives knew that the sub-contracting clause was not being observed for various reasons; at the outset there were insufficient ABC contractors about and there was a shortage of skilled labor in the Gillette area. As a result the union knew that much of the maintenance and construction work was being done by contractors and suppliers who had no relationships with the UMWA. That fact was stated to the union at the outset of the Denver negotiations and all of a sudden, almost a year later, the UMWA claims some ulterior motive on our part in wishing to continue the practice that has existed with respect to sub-contracting since that mine opened.

You repeatedly assert that the UMWA has given up a great deal and received nothing in return. We cannot agree with that statement, particularly that you have received nothing in return. Belle Ayr employees are receiving as much as employees are receiving in any other mine represented by your union and in some cases, more. While you state that you have very little left to give, we urge you to yield on the unlawful demands you are still maintaining that we must concede; for example, we can see no reason for you to continue to insist that the certified local not be mentioned in the agreement or permitted to sign the agreement.

In your letter you refer to contract provisions that you have dropped. It is not accurate to state that these clauses were contained in UMWA contracts with "Amax" for years since those agreements were not negotiated by Amax but by the BCOA, a separate group not controlled by Amax, unless you were referring to the separate predecessor agreement at Belle Ayr where Amax simply executed a separate agreement even before a representative complement of employees were hired and waived at that time the opportunity to "negotiate" until 1974, as discussed earlier.

Since you seem to claim you have made important concessions by dropping clauses, perhaps other comments are in order.

The Successorship Clause which you demanded and to which we objected and still object to on the grounds of its unlawful effect, and the fact that we could not be compelled to so bind our hands or options on future transactions, was insisted upon by the UMWA until November 14th. Notwithstanding the fact that you claim to have yielded on the Successorship Clause, you still insist on almost the same type of restrictions in other clauses.

It is true with respect to some of these clauses that Amax, when faced with your threatened unlawful and untimely strike, made an effort to compromise or agree. However, Amax stated it had legal objections and your unlawful strike didn't make our objections to those clauses disappear. We continued to assert them. We made another effort in March, 1975, and that offer fell on deaf ears and was not accepted by the agreed upon time and was rejected. UMWA thereafter did not even claim to relinquish its insistence on that unlawful successorship clause despite our repeated objections, until confronted with a National Labor Relations Board complaint attacking it. In view of this, we are not persuaded that your action in complying with the law should be considered to rise to the level of a "concession" in our negotiations.

In your letter you "claim" that UMWA dropped its unlawful proposals regarding private leasing, sub-leasing and licensing out coal lands. However, the language you still insist on is still improper and unlawful.

You claim that you withdrew the retroactivity allowance which you claimed was a cash benefit to employees to compensate them for the rising cost of living. However, you insisted we pay a higher retroactivity allowance and informed us that it had to do, in part, with the vacation and Christmas bonus which our employees had earlier received; in February your negotiators refused to provide us with any supporting facts as to the justification for retroactivity; and, in addition to that, on March 24th our employees all received a retroactivity allowance agreed to by the Peabody group and your subsequent demands on this point would have required us to pay that same sum all over again. We are having a difficult time understanding how your withdrawing of a proposal that we pay employees double, is an important "concession. It smacks more of simply the elimination of a "strawman" proposal.

You claim that you made a substantial concession on November 14th in withdrawing manning requirements for surface mining equipment except on over-burden drills. An examination of your November 14th proposal discloses that it is true that you claimed to have withdrawn that proposal; however, Article XIX contains the very manning requirements you claim to have withdrawn. The original proposal regarding manning of certain mining equipment is contained in Article XIX of the Peabody Agreement. Your November 14th proposal doesn't change it in any material respect that we can ascertain. Taking something away with one hand and giving it back with the other hardly constitutes a concession, particularly since the proposal doesn't result in any actual change in position.

You claim a major concession in withdrawing the severability clause, which in effect provided for a reopener

of everything in the event one particular provision of the agreement was conscidered or declared invalid. We are appreciative of that concession but Amax never made it a major hangup point with the Mine Workers.

You further contend that you withdrew the requirements that the Mine, Health and Safety Committee have input in the development of mining plans. We never took the position that the Mine, Health and Safety Committee should not have "input" in the development of mining plans. Our position simply was that the decisions as to what to mine and when was basically a responsibility of management and that we would discuss anything employees wanted at any time that related to safety and further that we did not want our mining plans a matter of public record; that the grievance procedure was always available to handle any problem that might arise as a result of a mining plan and certainly any safety problem in connection therewith. Input in the development of mining plans, insofar as it would have involved safety, particularly, was always assured by our agreement to Article III (C) (6) of the original UMWA proposal.

You further claim a substantial concession by your November withdrawal of what you characterize as traditional Amax-UMWA language extending contract jurisdiction to all mines of the employer. In the first place, while you did withdraw language which you had proposed, that broadly extended the contract jurisdiction to all mines including non-existent mines or future mines of the employer, the language that you retained still reserves to UMWA such rights. Furthermore, it is inaccurate to refer to that language as "traditional Amax-UMWA language" because apart from the temporary and probably at the time, illegal signing of the 1972 Belle Ayr Agreement, Amax never "negotiated" such language with the UMWA. Such language, which you call traditional, has occurred only in the BCOA Agreements which were not negotiated by Amax. The same is true about your claims that the Coal Lands Clause District Agree-

ments and Sub-Contracting Clauses are "traditional Amax-UMWA" contractual provisions.

In view of the fact that Amax never before had an opportunity to sit down and bargain with the UMWA as an individual company concerning some of this contractual language (much of which the parties themselves find ambiguous and don't understand) which had been inherited down through the years from the BCOA, we fail to see why you were unwilling to listen to our views on these clauses, particularly where the clauses you were insisting on were unlawful. For example, your language extending contract jurisdiction to all mines of an employer is unlawful. The Labor Board has attacked that clause and we pointed out all the legal objections to it but you struck us to obtain that and insisted on it until around November 14th, and to a certain extent, still are insisting on it today. So, we cannot see how you can expect us to count that as a concession.

You claim that there was tradition contractual language providing that where the union is certified or recognized as a legitimate collective bargaining agent, the contract will apply to all future coal operations and coal lands held by the employer or any subsidiary or affiliate. Language referring to UMWA representative status at a new mine first appeared in your July, 1975 proposal after we had objected and after Amax had already suffered more than six months of an unlawful strike. That qualification of representative status was removed from your November 14, 1975 proposal. To agree to extend the contract to future acquired and separate bargaining units is, as we told you many times at the bargaining table, unlawful because it deprives the employees at a new bargaining unit of the right to have their say in selecting their own representative and in determining what the new terms and conditions of employment will be. The latter flies in the face of the provisions of the Taft-Hartley Act which would prevent pre-hire agreements in anything other than the construction industry.

Additionally, your withdrawal of that clause was not complete because you are still insisting on something similar to that with respect to subsidiaries or affiliates as well as Amax.

In view of that, we hardly feel that that is a concession, particularly since continued insistence on your part on that was unlawful and could force us to violate the law and the rights of future employees.

With respect to your insistence on the vague language concerning District Agreements, we made every effort to try to ascertain what they were. One of your negotiating teams even agreed early in negotiations that there were no District Agreements applicable to the Belle Ayr Mine; notwithstanding that your negotiating teams continued to insist on that clause even though we objected to including something in the contract that had no application to our employees or the bargaining unit, that it was illegal to require Amax to agree to things that were agreed to or would be agreed to by others not designated by us as our representatives, particularly when we were unable to find out what those agreements were.

In view of the unlawful effect of your insistence on both clauses, we are not persuaded that it is appropriate for you to claim that you have made a substantial concession when you withdraw insistence on an unlawful demand.

From the outset of the development of the Belle Ayr Mine, the company, with the full knowledge and acquiescence of the United Mine Worker representatives, widely used sub-contractors to do construction and other work at Belle Ayr. This was done openly and in part caused by the severe lack of available numbers of skilled people in the area. From the outset of our negotiations with UMWA, Amax explained their problems with the subcontracting limitations that the UMWA proposals imposed on their sub-contracting of construction work and further pointed out that it was unlawful for the Mine

Workers to insist on that since the UMWA knew that Amax was not engaged in the building and construction industry and that Amax's agreement to limit their sub-contracting of construction work was not protected by the law. Notwithstanding all of the legal and practical objections, Amax negotiators made an effort to explore possible areas of agreement and try to accommodate to some of the concerns of the United Mine Workers in this area without waiving its legal objections. However, even to this day UMWA is still unlawfully insisting that Amax agree to improper limitations on the sub-contracting and construction work. We, therefore, are unpersuaded that it is appropriate for you to claim to you have withdrawn your demands in this area.

Frankly, your comment on Page 4 of your letter, that our response to your negotiators to the above-mentioned "far-ranging concessions" was a simple "we want more", is also unsupported by the facts. Amax negotiators, commencing on January 6th, laid out many of the legal objections that they had to many of the clauses in your proposal. Their ability to do this in greater detail was prevented not by Amax's unwillingness to go into greater detail but it became extremely difficult to find UMWA negotiators who would even sit down and bargain with Amax. We are concerned that perhaps you may not understand what went on at the meeting. The company's legal objections were spelled out in the January and February meetings, again in July and August and once again in October. Each time we literally started all over again from scratch and each time were were confronted with new UMWA bargaining teams who wanted to know, and to whom we have repeated, all of the positions we had taken earlier.

Following the October meetings efforts were made to try to accommodate UMWA's concerns but such efforts have not been successful. For example, in the spirit of trying to explore perhaps some type of accommodation in the unlawful areas of limiting sub-contracting of con-

struction work, we made proposals that would give due regard to existing employees and economics. For example, we proposed that construction work would be within the jurisdiction of the Mine Workers "insofar as is economically reasonable (given due consideration of cost, quality of work, availability, time and completion and other appropriate business judgments). . . ." We were both aware that it was not lawful for us to agree to bind other employers or limit ourselves from dealing with only certain employers where we are not involved in the construction industry, but we were making an effort to accommodate UMWA's concerns. Even that reasonable limitation, as it later turned out, was not acceptable and when the language in parenthesis was added, you claimed that we were asking for "more" and had reneged. In truth, all we had done was to add language that had been discussed, suggested and defined in earlier discussions.

You further claim that we insisted upon the destruction of certain protections for the employees which presumably are in effect at Belle Ayr:

1. "In the event of layoffs, the right of laid off employees to be hired in any mines you may hereafter develop in District 15 before you hire new employees off the street." As we pointed out to you in various meetings, this was, in effect, an insistence on extra unit bargaining and we did not think that we either had any duty to bargain about terms and conditions at any new units that may be developed. While that provision may be important were there various mines in existence, all represented by the same representative in the same unit, we do not think you can assert that that right was in existence before at Belle Ayr. This is particularly so for when Amax negotiator first objected to the extra unit effect of the provisions in the Enabling Clause and the other provisions of the agreement and its effect on the rights of employees at new facilities to have a say in their own terms and conditions of employment, UMWA representatives advised us that those clauses notwith-

standing what they said, would not have any effect if an employee filed a petition for an election. (It should be noted your negotiators refused to put that claimed oral interpretation of your original proposal into writing. The UMWA's July proposal appeared to recognize this but it was then withdrawn from the November 14, 1975 proposal.) We also question whether employees can be said to have had a right to transfer to a new bargaining unit before the new bargaining unit exists and whether or not we can properly insist or be compelled to agree in advance that employees yet to be hired at a different bargaining unit not yet in existence, be bound by provisions which favor employees at another bargaining unit.

2. Your contention that we were removing "language protecting the right of classified employees to do bargaining unit work", is not true because the contract and our proposals already protects employees in doing bargaining unit work. Our objections were to the efforts by the UMWA to expand your jurisdiction and control into areas that had not been performed by UMWA represented employees in the past. Amax representatives frankly stated to UMWA representatives down through the entire period of the negotiations that they were unwilling to believe that they should be compelled to tie their hands with respect to work now performed before the UMWA represented individuals or individuals in the bargaining unit or where to do so was not economically feasible or as efficient for the company. Notwithstanding those objections, Amax proposed language protecting the right of classified employees in the event work was sub-contracted so that sub-contracting would not affect their jobs or cause unemployment. "Our objections were to the expansion of the bargaining unit work by the language proposed by UMWA.

3. Your statement that we are insisting on destruction of portability of pension rights is totally false. If you were sincerely interested in portability you could have agreed to our proposal on reciprocity as many other

unions have done where different funds are involved and sought that formally through your trust representative. However, you rejected that. My previous letter to you fully explains how the UMWA, by its adamant insistence on compelling Amax's Belle Ayr employees into the UMWA pension funds, does not give them any more "portability" than they now have. Your claim that Amax was depriving Amax employees of portability is not the fault of Amax but is the fault of UMWA. The UMWA, at any time, could have proposed and sought reciprocity. You did not. Notwithstanding what you claim, the facts are clear. The UMWA refused to agree to a pension plan proposed for Belle Ayr employees, which is better in benefits and better in terms of portability than anything proposed by the UMWA.

4. At various sessions in the discussion regarding seniority lists, UMWA representatives advised Amax negotiators that all that was intended by dual "panel custodians" was the right to check the records. We did not see how joint custodianship would facilitate that and told them it was agreeable to us that they do check the records anyhow. All that we can conclude is that UMWA was insisting on the old language simply because it was language with which they had been historically familiar.

Your arguments about our concern about "joint custodianship" of seniority lists, escapes us. Your negotiators were told at the bargaining table that we would not hang up on that problem, but that as a pretrial matter, we could not understand how two people jointly held anything like a seniority list. The company explained it was not going to turn its employee records over to the union and we proposed instead that we regularly send lists which the unions could check and verify and file grievances if they felt that the seniority list was not accurate. We fail to see what employee rights are involved in "joint custodianship" of seniority lists. The only thing we could determine from negotiations was that our proposal is the practice that UMWA has always

followed. We were never able to determine how it could otherwise work.

5. Your claim that we intended to take away "language protecting classified employees against sub-contracting of repair and maintenance work which *can* be performed at the mine", is again, another strawman. Our counter-proposal to you on that contained the limitations that the sub-contracting (which has been going on for as long as the mine has been operating), would not result in any unemployment of existing employees. Even after getting that kind of protection UMWA insisted on trying to extend their jurisdiction to do repair and maintenance work which UMWA had not been doing since the mine commenced operations.

In your letter, on Page 5, you say "Amax freely admitted that at least fourteen sub-contractors were illegally performed bargaining unit repair and maintenance work at the Belle Ayr property during the 1971 agreement and are still performing that work today." As a matter of fact, as the first bargaining session in January, 1975, the Amax negotiators explained, in connection with the sub-contracting proposals, that this work had been performed by outside contractors with the knowledge and acquiescence of UMWA representatives since the mine had opened. Amax has never made an effort to conceal that fact and doesn't believe that under the circumstances they did anything illegal, nor did we ever admit we did. Furthermore, no grievances have ever been on this matter. It may have been illegal to have signed this first agreement, but we observe you make no mention of this. As a practical matter, skilled employees to do this work were simply not available in the community in sufficient numbers. Furthermore the "1971 agreement" was initially signed simply as a temporary expedient sometime in 1972 as the mine was beginning to open and before a representative complement of employees were employed. This was done with the intention that Amax and the union would sit down and negotiate an agreement for

their Belle Ayr Mine later in 1974 after the mine was established.

Your comment that one of our negotiators went so far as to assert that the only mechanical and repair work that bargaining unit employees were entitled to perform is "unsophisticated" maintenance, such as "greasing and oiling", is false.

What was said was that generally speaking bargaining unit employees performed "unsophisticated" maintenance work and that the "sophisticated" maintenance work such as complex rebuilding of diesel engines was performed by outside contractors. We pointed out that this was a situation that had developed as a result of the lack of enough adequately skilled people where the mine originally opened and decisions by the company not to spend large sums of capital purchasing complex and expensive maintenance equipment, but to, in turn, utilize available capital funds in production facilities and equipment.

You further accuse Amax falsely when you say that we made a totally outlandish demand to erode a historical employee right then withdraw it and claim a significant concession.

In your letter, on Page 5, you state that a good case in point involved seniority where for many months Amax negotiators "*seemed*" to take the position that once laid off an employee had no right to be recalled for employment at the Belle Ayr Mine in the future. That statement is false and you "seem" to take the position that you know it is because you do not say we made that statement. The only thing our negotiators said was that we felt that there should be a "reasonable" limit to recall rights. We pointed out the difficult administrative probblems that arise when an employee retains seniority rights forever even though he has drifted away to get other jobs and this would ———— employer holding up the filling of positions while many people are

contacted who may not have any future or real interest in further employment at the mine.

First you make an incorrect statement and state that it is an "inhuman" proposition. We are willing to agree that it might be a hard proposition but we never made it. We would hope that you would stop accusing us of doing things which we have not done. Furthermore, your representative never before claimed our request for a limit on seniority was inhuman. They proposed ten years and we countered with two.

You accuse us of agreeing to contractual language and at a later date withdrawing our agreement. This is not accurate. At the outset of negotiations Amax has stated their first objections to the various proposals without waiving their rights. Notwithstanding this, Amax has tried to find and explore areas of agreement even on such things as the unlawful demand by UMWA for a limitation on their right to sub-contract construction.

On Page 5 of your leter you complain that it is impossible to rely on the stability of tentative agreements on particular points because you will never then be able to reach overall accord. However, it was the United Mine Workers who proposed that all proposals would be subject to agreement on a final package and if there was no acceptance on the entire package there would be no agreement on anything and it was always understood the parties were free to submit changed or new proposals at anytime, particularly where those proposals had been rejected. We have changed proposals in an effort to try to reach a form of compromise and we proposed a signoff procedure to keep track of bargaining. Amax has never withdrawn any agreement on any matter that has been signed off unless such agreement was signed under protest with the full and complete knowledge of the UMWA negotiator and with his acceptance of that condition or the union agreed to the modification. Further, the parties at the outset contemplated that there might be some adjustment and revision of their proposals.

At the January 6th meeting our negotiators raised legal objections to various clauses including the Enabling Clause of which the successorship clause is a part and which was not specifically discussed. When the UMWA refused to bargain with Amax, Amax made every effort it could to find room for an agreement and proposed various combinations of packages, none of which were accepted by UMWA and all of which were rejected by UMWA.

We still do not agree with you that your successorship clause or your insistence on it is lawful.

On Page 6 you again chide us about our bargaining on the unlawful demand you made to limit our ability to sub-contract construction work. Your accusations fail to recognize all of the negotiations and objections that have been made made before November 14th. In July, October and December, UMWA representatives were told we did not want to agree to any language on this because it was illegal. UMWA representatives were also told that simply by having made a proposal on it, Amax had not and did not intend to withdraw its legal objections. With full knowledge that the company's old proposals regarding sub-contracting construction work were no longer on the table or had been rejected by UMWA, on November 14th, UMWA turned around and claimed to accept what was no longer on the table, notwithstanding they knew those proposals were not acceptable. As we said before, at no time has the company made any changes in signed-off proposals unless there was a protest raised at the signing as in the case of staggered vacation provision or unless mutually agreed. This was explained at the subsequent bargaining sessions, and to show that Amax was still trying, Amax proposed additional accommodating language on December 7th and 8th. Your statement that our negotiators rejected their own language and made a completely new proposal is false. Amax had withdrawn its subcontractor proposal by virtue of their legal objections in their meetings with UMWA negotiators in

July and August. We can understand how your existing negotiators may not be familiar with this since they profess to know litle or nothing about the negotiations that had gone on prior to October of 1975. However, they were informed of these objections in October. Furthermore, UMWA's belated acceptance did not clean up the legal infirmities and objections in that clause.

It is true that at our Denver meeting on October 20 and 21st, Amax negotiators informed the UMWA representatives that they wanted the right to load coal on Sunday but not from the pit. At that time there did not seem to be much difficulty expressed by UMWA representatives concerning working out something to accommodate Amax's problems in this area. At the December 7th and 8th, 1975 meeting in Salt Lake City, Amax negotiators further explained to the UMWA negotiators that they were continuing to have problems in getting trainloads out because of the railroad scheduling problems even though they had hoped that these problems would diminish, they were continuing. We then proposed that because of our inability to load coal from the pit Amax was losing trains and that this problem would become more severe as additional companies opened lines in the area. You accuse our negotiator of not providing you with documentation supporting our new position and we are as surprised by that as we are the reaction of your negotiators in February when you asked for that documentation. In December, in Salt Lake City and again in February our negotiators gave you our reasons and at no time agreed to give you any further documentation nor do we believe it is necessary. The train schedules are a matter of public record.

You also claim that on October 20 and 21 in Denver, Amax negotiators did indicate the "opinion" that they "believed idle day work should be shared within classification. This was indicated but only in the belief that the mine might have ———— non-production days. As it turned out in December, particularly with the

problems resulting from the train schedules, the company requested a change in its proposal which would allow Amax to load from the pit on Sunday; hence, there would be no idle day. Therefore, on December 7th, 1975, in the process of discussing our need for seven day production, we did not agree to sharing idle day work within classification on seven day operations because there would be no idle day on a seven day production program.

You also contend that Amax's March 14, 1975 proposals was our first complete package. That is not true. Also, with respect to Article IX relating to staggered vacation, we signed this under protest because the UMWA was insisting on this provision as well as others upon a predetermined fixed position and/or upon whatever the outcome of the Peabody group negotiations were. While we signed off on February 14, 1975, under protest, we raised objections to not having two separate vaction periods and the UMWA representatives at that time said "you may change the policy." Lastly, it was understood on October 21, 1975, by those present for both the company and the union that the vacation would be split into two periods, notwithstanding the language, consistent with the prior practice at Belle Ayr.

We take issue with your comment contained on Page 7 of your letter that Amax had previously put into effect a transportable single mine pension plan with special vesting provisions without presenting it to your negotiators or allowing UMWA to bargain on the subject. That statement is simply false. Amax proposed their own pension, health and welfare provisions from the outset in the January 6th and subsequent proposals. Your negotiators have, in various way, adamantly rejected any of these proposals. On March 14th, UMWA received a pension proposal to match the UMWA proposal and to accommodate the portability problem without changing the vesting schedule, it was orally proposed that reciprocity be adopted. However, if that was impossible, Amax

proposed in the alternative, a one year or immediate vesting program. The outlines of the program and benefits are presented to UMWA representatives in writing at various times. Amax, throughout the negotiations, has made every effort to keep UMWA informed and to try to avoid acting without your representatives knowledge even when Amax may not have had any duty to bargain with the UMWA. You are aware of the pension plan that is in effect because we gave ———— you a copy of it and ———— you before the end of the year that in view of the peculiar ——— situation that had arisen that it was necesary for Amax to proceed with the alternative plan, UMWA would not agree to reciprocity and failure to make action would result in less of what portability the employees had if the immediate vesting program was not adopted.

We are operating at our Belle Ayr Mine on the basis of the provisions of our March 14, 1975 final proposal to you with the exception of those items which we have otherwise subsequently discussed and proposed to you at the bargaining table, including the pension program. We gave you opportunity to bargain about other changes in our March 14th proposal, which proposal you rejected. Your rejections of these proposals are now again affirmed by your March 15th letter.

We hope that UMWA will reassess its attitude toward bargaining with us and make a real and meaningful effort to accommodate our reasonable needs.

Sincerely yours,

/s/ John S. Cairns
JOHN S. CAIRNS
Director—Industrial Relations

JSC:b

JOINT EXHIBIT 1(jjj)

Mr. Mike Trbovich, Vice President
United Mine Workers of America
United Mine Workers Building
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Trbovich:

I am in receipt of your letter to me enclosing a copy of a letter you received from UMWA Trustee, Harry Ruga, on the subject of reciprocity between the United Mine Workers of America Pension Trust Fund and the Amax Coal Company Belle Ayr Mine Pension Trust Fund.

In the first place we question whether any amendment of the trust documents or plan documents are necessary. No additional benefits or rights are created than are already recognized by those Trusts.

You only, apparently, "verbally" asked Mr. Ruga if the Trustees could grant reciprocity. It seems to me that this is a question that might best be directed to your attorneys or the Trust Fund attorneys since it calls for a legal interpretation of the powers and duties of the Trustees, and the scope of the Trust and the Plan.

We further note that you did not urge your representative, Mr. Ruga, to seek or press for reciprocity nor did you take a position apparently in favor of it. We also note that sometime ago your UHW bargaining committee advised us that they had contracted the BCOA bargaining representatives and that the BCOA said that they would not agree to reciprocity.

We recognized long ago that your Trustee and the BCOA Trustee were bound to follow the directions and instructions of their principals just as any other collective bargaining representatives would do. However, it is also the duty and the right of the Trustees to interpret and to apply the provisions of the trust and plan

much as the representatives of the parties do in interpreting and applying in the terms of a collective bargaining agreement once it is negotiated and signed by the parties.

We feel that if you sincerely wanted to preserve the portability of Amax employees, you could have instructed your Trustees to seek reciprocity and as you are aware, the Trust provides arbitration procedures for resolving any dispute that exists between the Trustees. However, you did not even try to do that. The same is true in connection with any disputes that arise between the parties to the collective bargaining agreement.

If an Amendment was necessary it probably would only be necessary to "implement the plan". There is plenty of authority for the Trustees to do that under Article VIII, (3) (1) of the Plan. We also believe that the Trustees have the inherent power to amend the Trust or adopt regulations which would insure the employees of portability without creating new rights other than those of the same kind already extended under the provisions of the Trust and the Plan.

Your letter refers to the BCOA's views on the matter, which you say makes resolution of the problem futile. We are unpersuaded. An extremely broad grievance and arbitration procedure exists in the BCOA Agreement and any dispute, even not one covered by the Agreement, could be resolved by arbitration if you would only seek reciprocity. As we pointed out before, if there was a difference between the Trustees, that again is resolvable by the arbitration process as is provided for in the Trust documents.

In addition to the foregoing, your comment about UMWA's "strongly held views" on the advantages of portability as a reason for rejecting our current Pension proposal is not convincing for several reasons:

A. Your fund already grants reciprocity to employees of employers who are not signatory to the BCOA

Agreement (the bituminous coal wage agreement) or any agreement. (See Page 17, Article IV (a) and Page 23, Article IV (a) (5) relating to non-signatory services contained in your UMWA Pension Plan. In addition to that you have permitted the Kiewitt Corp. and other employers in separate bargaining units who are not signed to the BCOA Agreement (bituminuous coal wage agreement) to participate in the plan, but only because they have agreed to all of the language contained in the bituminuous coal wage agreement concerning the Pension Plan, including the agreement to accept as their representative on the Trust, the representative selected by the BCOA.

B. Amax proposed reciprocity and alternatively an immediate or one-year vesting program before and after March 14, 1975 to avoid any possible objection to their program based on portability. Amax did this at a time when they were faced with UMWA's unlawful demands for participation in your Funds because of the requirement, among other improper things, that Amax contribute to the 1950 Benefit Trust Funds when the Belle Ayr bargaining unit had no employees who were either participating or who would ever participate in those funds. The UMWA later withdrew that illegal provision from their demand, recognizing its impropriety but not until they had subjected Amax to more than six months of bitter strike action and harassment to in part force Amax to agree to that improper demand.

C. Amax's immediate or one-year vesting alternative provides even *more* portability than the UMWA Pension Plan. Their program requires a minimum of ten years service in order for a person to be eligible for Pension and their service prior to retirement must end with an employer who is signa-

tory to the bituminuous coal wage agreement or some other agreement that the UMWA has with an employer; their plan further limits service in order to be compensable to the bituminuous coal industry. On the other hand, Amax's Plan is portable wherever employees are employed, after only *one* year of service.

D. Your comment that reciprocity is "impossible", we believe is not true, but it is descriptive of the fact that you do not want it to be possible and will not seek to bring it about, notwithstanding the fact that your plan does recognize reciprocity by also recognizing non-signatory service.

While Amax Coal Company Belle Ayre Mine Pension Plan provides those employees with greater portability than they had before under the old UMWA Plan, it was the only alternative if Amax was unable to lawfully bargain with UMWA. Amax delayed as long as possible in implementing the immediate vesting proposal in the hopes that UMWA would ultimately give Amax's reciprocity proposal fair consideration. When it appeared that would not occur and other legal impediments to continued bargaining with the UMWA arose in December (such as the Petition for an election by the employees at Belle Ayr Mine, who then presented Amax with a Petition by an organization called NEW ACME, which claimed to represent a substantial majority of the employees) we notified UMWA we were unable to wait any longer and we were opting to implement the immediate vesting proposal we had put into effect in the alternative as a result of the rejection of the March 14, 1975 final proposal. This action was also triggered by the fact that we were advised that in order to deduct pension contributions for 1975, Amax had to have a pian implemented and contributions made before December 31, 1975. Our representative notified your Mr. Banks and Mr. Trumka of this late in December.

This assured that Belle Ayr employees' benefits are "portable" and we submit that the facts and the records demonstrate they are even *more* portable than if you had agreed to our reciprocity proposal. UMWA's continued and adamant refusal to entertain Amax's proposals which are better both dollarwise and portability wise than existing UMWA benefits, we believe is not good for those employees and would require this company to give up their right to select its representative to act for it in administering the vitally important term and condition of employment, namely, pensions. That we are not willing to do.

Very truly yours,

John S. Cairns
Director—Industrial Relations

JSC:bp

cc: Rick Bank
Rich Trumka
Nick Halamandaris
Bill Furtado
Frank Stevenson
Dell Brownfield

JOINT EXHIBIT 2

Article XI—SICKNESS AND ACCIDENT BENEFITS

Section (a) General Purpose

The general purpose of the Sickness and Accident Benefits Plan established by this Article is to protect Employees against financial hardship resulting from sickness or accident suffered on or off the job, by providing compensation for earnings lost.

Section (b) Eligibility

Any Employee with six (6) months or more classified employment with the Employer who becomes disabled on or after May 1, 1975, as a result of sickness or accident, so as to be prevented from performing his regular classified job, and whose disability is certified by a physican legally licensed to practice medicine, shall be eligible to receive Sickness and Accident Benefits under the Plan. An Employee whose disability is the result of a mine accident suffered while he has been a classified Employee of the Employer shall be eligible to receive Sickness and Accident Benefits effective with his first day of classified employment. Benefits will not be payable for any period during which the Employee is not under the care of a licensed physician.

For the purposes of this Article, "classified employment" means employment in a classified job which has not been broken by quitting, discharge, retirement, or refusal to return to work following layoffs pursuant to the terms of Article XVII.

Benefits shall not be payable in the event that the Employee's employment had been terminated, or if he was laid off or was granted a leave of absence prior to his disability, or in the event that his disability is the direct result of an injury suffered prior to his employment with the Employer or while the Employee is engaged in employment other than classified employment with his Employer.

Benefits shall be terminated in the event that the Employee (1) receives a pension pursuant to Article XX; (2) receives Social Security old-age benefits; (3) accepts employment with another signatory Employer or with any employer not signatory to this Agreement; or (4) voluntarily severs employment with his Employer.

If, during a period when an Employee receiving Sickness and Accident Benefits is recovering from his disability, his Employer offers him a light-duty classified job, the Employee shall have the option to accept such employment, and Sickness and Accident Benefits shall terminate it he does so. For the purposes of this article, "light-duty" shall be defined as including any job in which occupational hazards, lifting of weights, and exposure to extremes of temperature, dampness, and dust are substantially less than those of the job held by the Employee at the time of his disabling accident or illness.

Section (c) Commencement and Duration of Benefits

Sickness and Accident Benefits shall begin with the first day of disability resulting from an accident, and with the tenth day of disability resulting from sickness, except that if the Employee is hospitalized because of a disabling sickness requiring surgical treatment or intensive care, benefits shall begin with the first full day of hospitalization.

Benefits for disability resulting from an accident, either on or off the job, shall be payable for a maximum of 52 weeks, regardless of the length of the Employee's classified emploment with the Employer at the time of the accident.

Benefits for disability resulting from sickness shall be payable according to the following schedule:

Length of Classified Employment with the Employer	Maximum Number of Weeks
At least 6 months but less than 5 years	26
5 years or more	52

If an Employee returns to work after receiving Sickness and Accident Benefits for less than the maximum number of weeks to which he is entitled, and is then absent again within 90 days due to the same sickness or accident which disabled him originally, there shall be no waiting period for benefits payable during the remaining weeks of his eligibility but the period during which he again receives benefits will be considered with the first period as one continuous period of disability. If the second absence results from a different sickness or accident, the first absence does not affect the duration of benefits for which the Employee shall be eligible for the second absence. If the Employee returns to work for 90 calendar days between two periods of disability, the second period shall not be considered as being due to the same sickness or accident as the first disability.

A change in the cause of the Employee's disability during a continuous period of absence from work on account of disability does not extend the maximum duration of Sickness and Accident Benefit payments.

In the event that an Employee becomes disabled prior to the commencement of a strike or work stoppage, his eligibility for benefits shall not be affected by the strike or work stoppage. In the event that an Employee becomes disabled during a strike or work stoppage, the seven-day waiting period, if applicable, will run, but the Employee shall not be entitled to receive benefits for any day of disability during the strike or work stoppage.

Section (d) Amount and Payment of Benefits

The amount of Sickness and Accident Benefits payable under this Plan shall be $100 per week, pro-rated over a seven-day week (Monday through Sunday).

Benefits shall be reduced by deducting any or all of the following forms of compensation to the extent that they are applicable to and are payable for the same sickness or accident and the same period for which the Employee qualified for Sickness and Accident Benefits under this Plan: (1) Workmen's Compensation benefits for tem-

porary or permanent disability, including state Black Lung benefits; (2) State or Federal disability benefits, exclusive of veterans' benefits; (3) Social Security primary disability insurance benefits; and (4) Federal Black Lung benefits.

Payment of Sickness and Accident Benefits shall not be made for any days during an Employee's disability for which he receives wage allowances pursuant to this Agreement, but the duration of Sickness and Accident Benefit for which the Employee is eligible shall be extended by an equal number of days.

Payment of benefits shall be made by check every two weeks, for all days during the preceding two weeks in which the Employee was eligible for benefits.

Section (e) Filing of Claims for Benefits

To be eligible for payment of benefits, the Employee must give written notice of disability to the Employer, including certification by a licensed physician upon request by the Employer, within 21 days after the day claimed as the first day of disability. The Employer shall be responsible for promptly forwarding the Employee's claim to an acceptable insurance carrier as described in section (f) of this Article, unless the Employer elects to provide benefits directly, in which case any undisputed claim shall be paid within fourteen days of receipt of the Employee's claim.

Section (f) Structure and Administration

The establishment, administration, and operation of the Sickness and Accident Benefits plan shall be the joint responsibility of the Employers and the Union.

Not later than March 1, 1975, the Trustees of the United Mine Workers of America Health and Retirement Funds as defined in Article XX shall prepare and make available to the Employers and the Union a list of at least five (5) and initially not more than fifteen (15) acceptable insurance carriers, based upon scrutiny

of model plans provided by the respective carriers and such other criteria as the Trustees may deem pertinent. Subsequent thereto, the Trustees may add additional carriers to the list at their discretion. Upon the approval of the Employe. , and the Union, but not later than April 1, 1975, the list shall be distributed to all signatory Employers. Not later than May 1, 1975, each Employer shall be solely and individually responsible for provision of the benefits set forth in this Article, either directly or through such of the acceptable insurance carriers as he may designate. If an Employee elects to provide benefits directly, he shall notify the Trustees and shall file with the Trustees an agreement to conform to the purposes and objectives of this Plan.

The Employer or his insurance carrier shall have the right to take reasonable steps to investigate the factual aspects of an Employee's claim, including examination of the Employee by a physician at the Employer's or carrier's expense, in the event of a dispute over medical evidence. A dispute unresolved after such investigation shall be subject to resolution at the fourth step of the grievance procedure as set forth in Article XXIII (Settlement of Disputes). A representative of the Department of Occupational Health of the International Union shall have the right to assist a grievant.

The Trustees shall have the right to investigate fully any or all disputed claims in order to establish consistency of coverage and of the awarding of claims and benefits. Based upon such investigation, the Trustee shall, at the end of the first 12 months experience with this Plan, prepare a report to the Employers and the Union and shall, pursuant to such report, prepare a revised list of acceptable insurance carriers, based upon the experience of the preceding year. The list may be further revised thereafter at the discretion of the Trustees. The Trustees shall have the power to remove any insurance carrier from the list for failure to provide the benefits described in this Article in a manner consistent with the terms of the Plan, and, in the event that an insurance

carrier is so removed, it shall be the responsibility of any affected Employer to cancel any policy or policies he may have with any such disqualified insurance carrier, and to replace such policy or policies with a policy or policies provided by an acceptable insurance carrier, not less than 30 days after notification by the Trustees.

If, on the basis of their investigation of disputed claims, the Trustees find evidence than an Employer who elects to provide benefits directly has done so in a manner inconsistent with the terms of the Plan, the Trustees shall first inform such Employer and shall request that he establish coverage through any of the acceptable insurance carriers that he may designate. If the Employer fails to do so, and if the Trustees find that he is continuing to provide benefits in a manner inconsistent with the terms of the Plan, the Trustees may take such action as they deem necessary, including any and all legal means, to enforce compliance with the terms and objectives of the Plan.

In the event that a carrier makes available additional or extended coverage based upon Employee payment of premiums, or an Employee chooses to seek coverage from another carrier, nothing in this Article shall be construed as prohibiting such voluntary expansion of coverage. At the request of the Employee, and in accordance with the terms of Article XV (Checkoff), the Employer shall deduct such premium payments.

JOINT EXHIBIT 2

ARTICLE XX—HEALTH AND RETIREMENT BENEFITS

Section (a) General Purpose

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts described in Sections (b) and (c) of this Article.

A summary of the benefits to be provided appears immediately following this Article.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust shall assume the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust, and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from either the 1950 Benefit Trust or the 1974 Benefit Trust.

The general purpose of the plans established by the Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; and health care and financial support for eligible disabled miners, miners' widows and surviving dependents as provided by each of the Trusts and Plans established under this Article.

It is agreed that the Trusts established in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and they shall endure as long as the purposes for their creation shall exist.

Section (b) 1950 Plans and Trusts

Effective December 6, 1974, the name of the 1950 Fund is changed to the United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust"). The 1950 Pension Trust is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund are hereby amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

Effective December 6, 1974, there is established a benefit plan and trust, which trust shall be known as the United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust"). The 1950 Benefit Trust is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be

transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) 1974 Plans and Trusts

(1) Effective December 6, 1974, there is established a pension trust to be known as the United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust"), which is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and is effective December 6, 1974.

(2) Effective December 6, 1974, there is established a benefit plan and trust, which trust shall be known as the United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Trust"). The 1974 Benefit Trust is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust.

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts established in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of sub-bituminous coal or lignite produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts established in this Article the amounts specified below based on cents per hour worked by each of the Employer's Employees who perform classified work under this Agreement:

(i) Into the 1950 Pension Trust: for the period beginning January —, 1975 and ending December 6, 1975, ——— per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning January —, 1975, and ending December 6, 1975, ——— per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning January —, 1975, and ending December 6, 1975, ——— per hour on each such hour worked; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton, plus ——— per hour on each such hour worked; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per ton on each such ton, plus ——— per hour on each such hour worked; and

(iv) Into the 1974 Benefit Trust: for the period beginning January —, 1975, and ending December 6, 1975, ——— per hour on each such hour worked; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per hour on each such hour worked; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per hour in each such hour worked;

(v) In the event that the 1950 Pension Trust, the 1950 Benefit Trust, the 1974 Pension Trust and the 1974 Benefit Trust are not established on the date that any contributions become payable under this Agreement, such contributions shall be paid to the 1950 Fund.

In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to

the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of sub-bituminous coal or lignite after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hour worked contributions covered to tonnage equivalents):

(i) Into the 1950 Pension Trust: for the period beginning January —, 1975, and ending December 6, 1975, ——— per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton; and for the period beginning December 6, 1976, and ending when this agreement is terminated, ——— per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning January —, 1975, and ending December 6, 1975, ——— per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period begining January —, 1975, and ending December 6, 1975, ——— per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per ton on each such ton; and

(iv) Into the 1974 Benefit Trust: for the period beginning January —, 1975, and ending December 6, 1975, ——— per ton on each such ton; for the period beginning December 6, 1975, and ending December 6, 1976, ——— per ton on each such ton; and for the period beginning December 6, 1976, and ending when this Agreement is terminated, ——— per ton on each such ton.

(v) In the event that the 1950 Pension Trust, the 1950 Benefit Trust, the 1974 Pension Trust and the 1974

Pension Trust are not established on the date that any contributions become payable under this Agreement, such contributions shall be paid to the 1950 Fund.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Coal Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

Definition of Hours Worked

Hours of work for purposes of Employer contributions to the various Health and Retirement Trusts shall include all hours worked, or fractions thereof, by Employees in a classified job covered by this Agreement. Hours actually worked for which a premium pay of any type is provided shall be treated for purposes of Employer contributions to the Trusts as though worked on a straight-time basis. Reporting pay for hours not actually worked shall not be included for the purpose of making Employer contributions to the Trust.

At any time during the term of this Wage Agreement, the Employers and the Union may agree upon a reallocation of contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the contributing

Employers of the cents per ton to be allocated to each Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) No monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust:

(b) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of Erisa, or to fail to satisfy any applicable provision of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code:

(c) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(d) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts; and

(e) No decrease in the cents per ton contributed to the 1950 Benefit Trust shall be adopted which will result in any substantial reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

(2) The Trustees are hereby directed to establish a royalty rate or rates for bituminous coal which is recovered from slurry ponds, sludge piles, and other coal

refuse, which is sold during the life of this Agreement, and such royalty rate will be paid on each ton of such coal recovered for use or for sale. Royalty rates currently being paid for coal recovered from slurry ponds, sludge piles and other coal refuse shall remain in effect unless and until changed by the Trustees. All royalties payable by Employers pursuant to this paragraph shall be divided among the 1950 Benefit Trust, the 1974 Benefit Trust, the 1950 Pension Trust and the 1974 Pension Trust in proportion to the total contribution paid to each such Trust by all Employers for the month preceding the month in which such royalty is due and payable.

(3) The obligation under this Section of any Employer signatory hereto shall be to contribute the amounts specified in this Section.

(4) The obligation to make payments to the Trusts specified in this Article shall become effective on the dates specified in the respective Subdivisions (i) through (v) of this Section, and the first payments are to be made on the 10th day of each month after such specified dates, and thereafter continuously on the 10th day of each succeeding calendar month.

(5) It shall be the duty of each of the Employers signatory hereto to keep current said payments due to the Trusts, and to furnish to the International Union, United Mine Workers of America and to the Trustees of those Trusts a monthly statement showing on a mine-by-mine basis the full amounts due hereunder and the tons of coal produced, procured or acquired for use or for sale and the hours worked with respect to which the amounts are payable. Payments to those Trusts shall be made by check payable, as appropriate, to:

"Trustees of the United Mine Workers of America 1950 Pension Trust"

"Trustees of the United Mine Workers of America 1950 Benefit Trust"

"Trustees of the United Mine Workers of America 1974 Pension Trust"

"Trustees of the United Mine Workers of America 1974 Benefit Trust

The Trustees are hereby authorized to require each signatory Employer to make payment of all contributions to the 1950 Benefit Trust, the 1974 Benefit Trust, the 1950 Pension Trust and the 1974 Pension Trust by a single check made payable in such manner as may be specified by the Trustees.

(6) Payments shall be delivered or mailed to the office of the Trusts currently located at 2021 K Street, N. W., Washington, D. C. 20006, or as otherwise designated by the Trustees of those Trusts.

(7) Failure of any Employer signatory hereto to make full and prompt payments to the Trusts specified in this Article in the manner and on the dates herein provided shall be deemed a violation of this Agreement. This obligation of each Employer signatory hereto, which is several and not joint, to so pay such sums shall be a direct and continuing obligation of said Employer during the life of this Agreement and it shall be deemed a violation of this Agreement, if any mine, preparation plant or other facility to which this Agreement is applicable shall be sold, leased, subleased, assigned, or otherwise disposed of for the purpose of avoiding any of the obligations hereunder.

(8) Each Employer agrees to give proper notice to the President of the local union at the mine by the 18th day of each month that the Employer has made the required payment to the Trusts for the previous month, as required by this Article, or is delinquent in such payment, such notice to set forth the amount paid to the Trusts, or the amount of the delinquency, the tonnage produced and the hours worked with respect to the mine or mines under the jurisdiction of such local union.

(9) Title to all the monies paid into and/or due and owing to the Trusts specified in this Article shall be vested in and remain exclusively in the Trustees of those Trusts. It is the intention of the parties hereto that those Trusts shall constitute irrevocable trusts and that no benefits or money payable from those Trusts shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and

that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

(10) It is understood that the individual Employees of Employers agree, through their representative, the United Mine Workers of America, to surrender any personal or individual right to or interest in monies paid or required to be paid to the Trusts pursuant to these agreements (which monies might otherwise have been paid for wages or other benefits to such Employees), in consideration of the benefit which is provided by the pooling of such monies into common funds to be applied to the benefit of the designated beneficiaries pursuant to the Trust instruments.

(11) Any judgment obtained by the Trustees of the Trusts established pursuant to this Agreement for a default giving rise to damages accruing to more than one of the Trusts established hereunder shall be allocated by the Trustees among such Trusts in proportion to the amounts owing to each which gave rise to such judgment.

Section (e) Responsibilities and Duties of Trustees

(1) Each Trust shall be administered by a Board of three Trustees, one of whom shall be appointed by the Employers; one of whom shall be appointed by the Union; and one of whom shall be a neutral party, selected by the other two. The Trustees, or their duly appointed successors, shall serve for the duration of the Agreement and as long thereafter as the proper continuation and administration of the Trusts shall require. The representative of the Employers on the Board of Trustees shall be C. W. Davis, Bluefield, West Virginia; the representative of the Union on said Board of Trustees shall be Harry Huge, Washington, D. C.; and Paul R. Dean, Washington, D. C., is appointed as the neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the Trusts.

(2) It is the intent and purpose of the contracting parties that full cooperation shall be given by each of them to one another, to the Trustees provided for under this Article, and to all affected mine workers, to the even-

tual coordination and development of policies and working agreements necessary or advisable for the effective operation of the Trusts and Plans.

(3) Action which may be required by the Employers in connection with any matter hereunder, including but not limited to the appointment of a successor Trustee, may be taken by those Employers who are parties to this Agreement, and authorization, approval or ratification of Employers representing fifty-one per cent (51%) or more of the total contributions made to the Trusts during the calendar year (or such shorter period which may have elapsed after the effective date of this Agreement) previous to that in which the action is taken shall be sufficient and shall bind all Employers.

(4) All covenants, rights and obligations accruing to the Trusts, and Benefit Plans, and the Trustees of the Pension and Benefit Trusts and Plans, and all breaches, violations and/or defaults of any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements, or Pension Plans, shall be enforced by the Trustees, at their discretion, through any and all available legal means, without first exhausting the grievance and arbitration procedures set forth in this Agreement, and such Trustees shall determine whether any provision of this Article pertaining to the Trusts and Plans, the Trust Agreements or Pension Plans has been breached, violated or is in default.

Section (f) Audits, Reports and Notices

(1) It is agreed by the contracting parties that annual independent audits of the Trusts shall be made by independent certified public accountants to be designated by the Trustees of the Trusts. A statement of the results of such audits shall be sent to the contracting parties and shall be made available upon written request to any working or retired miner or to any beneficiary either by mail or at the principal office of the Trusts, or at such other place as may be designated by the Trustees.

(2) If the Trustees determine that there is reasonable cause to question the accuracy of the sums paid under

Section (d) of this Article, or of any verification thereof made by an Employer for a given monthly or annual period, the Employer shall, upon written request by the Trustees, make available for inspection and/or copying at reasonable times and places to a representative of the Trustees, those records which are necessary to verify the accuracy of the sums paid.

(3) A complete accounting, on a mine-by-mine basis, of contributions received by the Trusts under this Article shall be furnished by the Trustees, at least on a quarterly basis, to the International Union. Such an accounting will also be supplied to the District and Local offices of the Union with respect to the mine or mines under their jurisdiction. Such accountings shall include tonnages of coal produced and hours worked with respect to which contributions were paid, together with an identification of any period or periods in which contributions were delinquent, showing the amounts of such delinquencies. The Trustees shall take such action as they deem appropriate to collect any such delinquencies, and shall advise the International Union and the appropriate Districts and Locals of the Union, on at least a monthly basis, of such delinquencies, as long as such delinquencies continue.

(4) Upon the written request of any International, District or Local officer of the Union, the Trustees shall make available within seven (7) days of receipt of such request an up-to-date accounting of contributions made and delinquencies outstanding, in respect to any mine or related facility with respect to which such officer has union jurisdiction.

Section (h) Administration of Trusts

(1) Each Employer shall make available to the Trustees within a reasonable time such information as the Trustees may determine to be reasonably required for the purpose of administering the Trusts and Plans.

(2) The Trustees shall respond to all written requests for information, applications, and other communications from beneficiaries within 15 working days from their re-

ceipt at the office of the Trusts. A response from the Trustees may be either a telephonic communication or a letter acknowledging receipt of such communication from the beneficiary. A pension application must be initially approved or denied within 12 weeks of the receipt of the application. The foregoing shall not apply in the event of delays caused by conditions beyond the control of the Trustees.

(3) Within six months after the effective date of this Agreement, the Trustees shall develop a suitable plan for policing and monitoring the rolls of those entitled to benefits from the Trusts. On at least a quarterly basis, the Trustees shall have available a complete listing of current beneficiaries, identified by UMWA district and local union jurisdiction, if applicable. The Trustees shall promptly investigate and determine the eligibility or ineligibility of any beneficiary whose right to receive benefits from the Trusts has been challenged by an Officer of the International, District or Local Union or by any Employer. In the event that a beneficiary or beneficiaries shall be determined to be ineligible for health care or other benefits, the Trustees shall take prompt action to correct this situation.

(4) Within six months after the effective date of this Agreement, the Trustees shall conduct a comprehensive review of procedures for monitoring covered medical expenses and shall report to the contracting parties with respect to insuring an effective system of cost controls, especially regarding any fees charged by physicians, hospitals, clinics, pharmacists or others which appear to be excessive. The Trustees shall take such steps as they deem appropriate to improve such procedures, and shall report to the contracting parties on such activities regularly thereafter, at least annually.

(5) The Trustees are authorized, upon approval by the Employers and the Union, to make such changes in the Plans and Trusts hereunder as they may deem to be necessary or appropriate.

They are also authorized and directed, after adequate notice and consultation with the Employers and Union, to

make such changes in the Plans and Trusts hereunder, including any retroactive modifications or amendments, which shall be necessary:

(a) to conform the terms of each Plan and Trust to the requirements of ERISA, or any other applicable federal law, and the regulations issued thereunder;

(b) to obtain determination letters from the Internal Revenue Service that the two Pension Trusts will each meet the requirements of Section 401 of the Internal Revenue Code and the Trusts thereunder will be exempt under Section 501(a) of such Code and that the two Benefit Trusts will be exempt under Section 501(c)(9) of such Code;

(c) to establish the deductibility for income tax purposes of any and all contributions made by the signatory operators to the Pension Trusts and Benefit Trusts as paid or incurred; or

(d) to comply with all applicable court or government decisions or rulings.

SUMMARY OF PRINCIPAL PROVISIONS, UMWA HEALTH AND RETIREMENT BENEFITS

(1) PENSIONS FOR MINERS WHO ARE ALREADY RETIRED:

Formerly at $150 per month, these pensions are to be increased according to the following schedules:

(a) For retired miners who receive state or federal black lung benefits, an immediate increase to $200 per month, with a second increase one year after the effective date of this Agreement to $215 per month, and a third increase two years after the effective date of this Agreement to $225 per month.

(b) For retired miners who do not receive state or federal black lung benefits, an immediate increase to $200 per month, with a second increase one year after the effective date of this Agreement to $225 per month,

and a third increase two years after the effective date of this Agreement to $250 per month.

Any pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage.

(2) PENSIONS FOR MINERS WHO RETIRE AFTER THE EFFECTIVE DATE OF THIS AGREEMENT BUT PRIOR TO JANUARY 1, 1976:

A working miner who retires after the effective date of this Agreement but prior to January 1, 1976 and who is eligible for a pension will receive the same benefit levels as set forth in paragraph (1).

(3) PENSIONS FOR MINERS WHO RETIRE IN 1976:

A working miner who retires at any time in 1976 and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon an entirely new plan which provides credit for all years worked. Full credit is provided for years worked in mines of signatory Employers; partial credit is provided for years worked in mines of non-signatory Employers.

The earliest retirement age under this Plan will be 55. A miner may retire at 55 with 10 or more years of signatory employment.

Pension credits under the new plan are increased as a miner accumulates more years of employment. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

In the first year of this pension plan (1976), the maximum credits are as follows:

- $12 per month multiplied by the years of signatory employment for the first 10 years of employment.
- $12.50 per month multiplied by the years of sig-

natory employment for the second 10 years of employment.

- $13 per month multiplied by the years of signatory employment for the third 10 years of employment.
- $13.50 per month multiplied by the years of signatory employment for each year over 30 years of employment.

To estimate your pension under the terms of this new Plan, see the table on page ——.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50 per cent of his pension until her death and will retain a Health Services card until her death or remarriage.

As a hedge against the anticipated increase in the cost of living, miners who retire under the new Plan during 1976 will receive a $10 per month increase in 1977.

(4) PENSIONS FOR MINERS WHO RETIRE IN 1977:

Benefits under the new Plan will be increased for miners retiring in 1977. Subject to the same terms as paragraph (3), the maximum benefit schedule applicable in 1977 will be as follows:

- $12.50 per month multiplied by the years of signatory employment for the first 10 years of employment.
- $13 per month multiplied by the years of signatory employment for the second 10 years of employment.
- $13.50 per month multiplied by the years of signatory employment for the third 10 years of employment.
- $14 per month multiplied by the years of signatory employment for each year over 30 years of employment.

If you retire in 1977, estimate your pension by referring to the table on page ——.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50 per cent of his pension until her death and will retain a Health Services card until her death or remarriage.

(5) PENSIONS FOR DISABLED MINERS:

A miner who becomes permanently and totally disabled as the result of a mine accident after the effective date of this Agreement will become eligible for pension benefits according to the following schedule:

(a) If a miner has less than ten years of signatory employment at the time of his disabling accident, he will receive a $125-month pension for life, and will retain his Health Services card for life.

(b) If a miner has ten years or more of signatory employment at the time of his disabling accident, he will receive an increased pension based upon the years of credited employment which he has accumulated at the time of his disabling accident. If the disabling accident occurs after the effective date of this Agreement but prior to January 1, 1976, the initial pension payment will be $125 per month, but such amount will, effective January 1, 1976, be increased to the pension levels at age 62 shown in the table on page 51. If the disabling accident occurs on or after January 1, 1976, the initial pension levels at age 62 shown on page 51 will apply immediately. (For example, a miner disabled during this period of time who is age 44 and has 22 years of employment, would be eligible effective January 1, 1976 for a disability pension of $271 per month).

If the disabling accident occurs in 1977, the higher schedule of benefits shown in the table on page 51 will apply. (In this case, the example Employee would receive $282 per month.)

(c) A miner who was permanently and totally disabled as the result of a mine accident after May 29, 1946, but prior to the effective date of this Agreement in a then signatory mine, will be eligible, upon application and

certification of disability, for a pension of $125 per month for the rest of his life, and will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(6) PENSIONS FOR WIDOWS:

The new Plan provides, for the first time, for widows' pensions. Benefits will ordinarily be payable according to the following schedule:

(a) If a miner working on or after January 1, 1976, becomes eligible for a pension at any time thereafter, his widow will be entitled to receive a Surviving Spouse pension equal to 50 per cent of his pension until her death; she will retain a Health Services card until her death or remarriage.

(b) If, on or after January 1, 1976, a working miner dies (regardless of cause) and would have been eligible for an immediate pension had he retired on the date of his death, his widow will be eligible for a pension equal to 50 per cent of the pension he would have received, and will receive his pension until her death; she will retain a Health Services card until her death or remarriage.

(7) DEFERRED VESTED PENSION:

If a working miner terminates his employment for any reason after completing 10 years of signatory employment, and before age 55, he will be eligible to receive a pension at age 62, or an actuarially reduced pension at any time after 55. The widow's pension described in paragraph (6) does not apply to the widow of a miner receiving a deferred vested pension.

(8) BASIC DEATH BENEFITS:

Under the terms of this Agreement, basic death benefits are substantially increased, and will be payable according to the following schedule:

(a) Upon the death of a working miner with one to five dependents, a death benefit of $7,500 will be paid

to his widow or, in the absence of a widow, to his surviving dependents.

(b) Upon the death of a working miner with more than five dependents, a death benefit of $8,000 to $10,000 will be paid to his widow (or, in the absence of a widow, to his surviving dependents), based on an incremental payment of $500 per dependent.

(c) Upon the death of a working miner with no dependents, a death benefit of $2,000 will be paid to his nearest designated survivor, except that if the cause of death was any accident, the death benefit will be $7,500.

(d) Upon the death of a pensioned miner with dependents, a death benefit of $2,500 will be paid to his widow, or, in the absence of a widow, to his surviving dependents.

(e) Upon the death of a pensioned miner with no dependents, a death benefit of $2,000 will be paid to his nearest designated survivor.

(9) DEATH BENEFITS WHEN DEATH IS THE RESULT OF A MINE ACCIDENT:

If, after the effective date of this Agreement, a miner is killed in a mine accident, his widow will receive, in addition to the basic death benefit described above, a one-time cash payment of $10,000 plus $100 per month until her death or remarriage. These benefits will be in addition to any pension to which she may be entitled. In the event that there is no surviving spouse and there is one or more surviving dependent children, the above benefits will be payable to unmarried dependent childen until age 22.

(10) HEALTH SERVICES CARD:

Regulations already in effect governing eligibility for Health Services cards are amended to include the following:

(a) A miner who (1) has completed 20 years of credited service, including the required number of years of signatory service, (2) has not attained age 55, and (3)

is disabled and receiving Social Security disability insurance benefits will be eligible for a Health Services card.

(b) A working miner who becomes totally disabled due to a compensable disability within 4 years of the date he would be eligible for retirement shall be entitled to a Health Services card while so disabled and during the period for which Workmen's Compensation payments are applicable.

(c) The widow of a miner who retired and received a pension at any time on or after May 29, 1946, will receive, upon approval of application, a Health Services card until her death or remarriage.

(d) The widow of a miner who became permanently and totally disabled as the result of injuries suffered in a mine accident at any time on or after May 29, 1946, will, upon approval of application, receive a Health Services card until her death or remarriage.

(c) The widow of a miner who is currently receiving a pension, or a miner who receives a pension (other than a deferred vested pension based on less than 20 years of credited service) at any time after the effective date of this Agreement will upon his death retain a Health Services card until her death or remarriage.

(f) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

(11) HEALTH CARE:

All current programs administered by the UMWA Health and Retirement Funds will be carried forward and expanded as required to cover additional beneficiaries.

The foregoing summary is subject to the complete description of all benefits provided pursuant to this Agreement, which will be found in the Pension and Health Plans and Trusts adopted as part of this Agreement and incorporated herein by reference under the title "UMWA Health and Retirement Benefits." In case of conflict, the provisions of the Plans and Trusts shall be governing.

JOINT EXHIBIT 2

IMMEDIATE VESTING

AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN EFFECTIVE JANUARY 12, 1975

ARTICLE I—INTRODUCTION

Pursuant to the Collective Bargaining Agreement, the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN (hereinafter referred to as the "Plan"), provides pension benefits as hereinafter set forth. The provisions of the Plan are effective January 12, 1975, (the "effective date") and are set forth below.

It is the intention of the Employer, the Trustees, and the participants that the Plan be in complete compliance with the requirements and limitations set forth in the Internal Revenue Code and the Labor Law. Accordingly, all of the terms and conditions of the Pension Reform Act, by regulation or ruling, promulgated in compliance therewith by the Secretary of Treasury or prescribed in compliance therewith by the Secretary of Labor, are hereby incorporated into and made a part of this Plan. In the event of ambiguity or doubt as to the meaning of a word, paragraph or article hereof, or other interpretation of this Plan, the meaning and interpretation provided in said Act shall be used. This Plan shall be construed, applied and administered as to be in compliance, at all times, with the terms of the Pension Reform Act.

A. Definitions.

(1) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between AMAX COAL COMPANY and LOCAL UNION NO. 1854 of the United Mine Workers of America for the Belle Ayr Mine, dated

———————, 1975, and any amendments thereto or renewals thereof.

(2) "Employer" means AMAX COAL COMPANY and any successor of said corporation. A successor Employer shall be subject to the provisions of the Pension Reform Act as to said Act's requirements concerning years of service with a predecessor Employer, participation, vesting, funding and other similar provisions.

(3) "Participant" means any individual employed by Employer in the appropriate bargaining unit certified in NLRB Case No. 27-RC-4914 and on whose behalf contributions have been made to this Plan by the Employer pursuant to the Collective Bargaining Agreement and the Pension Trust, and any other individual entitled to receive pension benefits under the Plan.

(4) "Pension Trust" means the trust established pursuant to the Collective Bargaining Agreement to fund this Plan.

(5) "Trustees" means the Trustees of the Pension Trust, who shall be named fiduciaries pursuant to the Pension Reform Act; provided, however, that the Pension Trust may be amended to designate other or additional named fiduciaries under said Trust and the Plan.

(6) "Credited Service" means the years of service which are accumulated and maintained for participants in accordance with Article IV and includes related Credit Service performed for Employers signatory to a plan that is recognized as a related plan by the Trustees of this and the related plan for the purposes of determining eligibility for and payment of pro rata pensions.

(7) "Related Service" means work performed for employers who are signatory to a plan that is recognized as a "related plan" by the Trustees of this and the related plan for the purposes of determining eligibility for and the payment of pro rata pensions.

B. When Retirement Occurs.

For the purposes of this Plan, in the case of any participant, retirement shall be considered to occur on the last day of credited service, provided that on such day he was eligible for an immediate or deferred pension under this Plan.

ARTICLE II—ELIGIBILITY

A. Age 55 Retirement.

Any participant who (a) has at least one (1) year of credited service, and (b) has attained the age of fifty-five (55) years (but not the age of sixty-two (62)) prior to retirement shall be eligible to retire on or after January 12, 1975, and shall upon his retirement (hereinafter "Age 55 Retirement") be eligible for a pension.

B. Age 62 Retirement.

Any participant who (a) has at least one (1) year of credited service, and (b) has attained the age of sixty-two (62) years prior to retirement, shall be eligible to retire on or after January 12, 1975, and shall upon his retirement (hereinafter "Age 62 Retirement") be eligible for a pension. Age sixty-two (62) shall be considered the normal rtirement age for purposes of the Pension Reform Act.

C. Disability Retirement.

Any participant who becomes totally disabled on or after the effective date as the result of a mine accident shall, upon his retirement (hereinafter "Disability Retirement"), be eligible for a pension. A participant shall be considered to be totally disabled only if by reason of such accident he is subsequently determined to be eligible for Social Scurity Disability Insurance Benefits under Title II of the Social Security Act or its successor.

D. Deferred Vested Retirement.

Any participant not eligible to receive a pension under any other provision of this Article II whose employment with the Employer is terminated after January 12, 1975, for any reason and who at the time of retirement has at least one (1) year of credited service shall be eligible for a pension (hereinafter "Deferred Vested Pension"), upon attaining age sixty-two (62), or, at the election of the participant, he shall be eligible for a reduced pension beginning at any time after he attains age fifty-five (55). At the time of such termination, such participant shall be given an appropriate written notice of his eligibility and other relevant data.

E. Nonduplication.

A participant shall be entitled to receive a pension under only one of the foregoing paragraphs of this Article II with respect to any retirement.

F. Employment for Vesting Purposes.

For all purposes of this Article II, years of employment shall be computed by giving credit for one year of employment for any year for which the participant completed 1,000 hours of employment; provided that (a) all years of employment before age twenty-two (22) shall be disregarded, (b) all years of employment before January 1, 1971, shall be disregarded unless the participant completed at least three (3) years of employment after December 31, 1970, and (c) years of employment prior to any break in service shall be disregarded to the maximum extent permissible under Section 203(b)(3) of the Employee Retirement Income Security Act of 1974. The provisions of this paragraph shall be interpreted and construed in accordance with the requirements of the Pension Reform Act and the regulations issued thereunder.

Years of service for an employer who is a party to a Reciprocal Agreement to which the Trustees of this Plan

are signatory on behalf of this Plan may be counted as related credited service, see Reciprocal Agreement, if any.

ARTICLE III—AMOUNT OF PENSION

A. Retirement in 1975-1976.

A pension granted to a participant who retires on and after January 12, 1975, but prior to January 1, 1977 pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below.

(1) *Age 55 Retirement Pension.*

(a) a deferred pension, commencing after attainment of age sixty-two (62), computed under the provisions of Subsection A(2), below; or, at the election of the participant, (b) an immediate pension, equal to the deferred pension to which he would have been eligible under (a) above had he so elected, reduced by ¼ of one percent (.025%) for each full month (three percent (3%) per year), between the date on which pension benefits began and the date on which participant attains age sixty-two (62).

(2) *Age 62 Retirement Pension.*

The amount of pension for Age 62 Retirement or Disability Retirement, subject to a minimum pension of $125.00 per month for Disability Retirement, shall be determined as follows:

(a) for each of the first ten (10) years of credited service, $13.00 per month;

(b) for each year of credited service in excess of ten (10) years, but not to exceed twenty (20) years, $13.50 per month;

(c) for each year of credited service in excess of twenty (20) years, but not to exceed thirty (30) years, $14.00 per month;

(d) for each year of credited service in excess of thirty (30) years, $14.50 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof.

(3) *Deferred Vested Pension.*

The amount of a deferred vested pension shall be a pension, commencing on or after attainment of age sixty-two (62), computed under the provisions of Subsection A(2), above, or, at the participant's election, between ages fifty-five (55) and sixty-two (62) with the pension payable reduced to its actuarial equivalent pursuant to Appendix A.

B. Retirement in 1977 or Thereafter.

A pension granted to a participant who retires on or after January 1, 1977, pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below.

(1) *Age 55 Retirement Pension.*

(a) a deferred pension, commencing after attainment of age sixty-two (62), computed under the provisions of Subsection B(2), below, or, at the election of the participant, (b) an immediate pension, equal to the deferred pension to which he would have been eligible under (a) above had he so elected, reduced by ¼ of one percent (.025%) for each full month (three percent (3%) per year) between the date on which pension benefits began and the date on which the participant attains age sixty-two (62).

(2) *Age 62 Retirement and Disability Retirement Pension.*

The amount of pension for Age 62 Retirement or Disability Retirement, subject to a minimum pension of $125.00 per month for Disability Retirement, shall be determined as follows:

(a) for each of the first ten (10) years of credited service, $13.50 per month;

(b) for each year of credited service in excess of ten (10) years, but not to exceed twenty (20) years, $14.00 per month; (c) for each year of credited service in excess of twenty (20) years, but not to exceed thirty (30) years, $14.50 per month;

(d) for each year of credited service in excess of thirty (30) years, $15.00 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof.

(3) *Deferred Vested Pension.*

The amount of a deferred vested pension shall be a pension, commencing on or after age sixty-two (62), computed under the provisions of Subsection B(2), above, or, at the participant's election, between ages fifty-five (55) and sixty-two (62) with the pension payable reduced to its actuarial equivalent pursuant to Appendix A.

C. Increased Pension.

Effective as of January 1, 1977, the pension of any participant who retired under this Plan on or after January 12, 1975, and whose pension was computed under the provisions of Subsection A(1) and Subsection A(2) of this Article III shall be increased by $10.00 per month. This increase will not be applicable to those participants who are eligible for either a Disability Retirement Pen-

sion or who become eligible to receive a Deferred Vested Pension.

D. *Commencement, Suspension and Termination of Pensions.*

Payments of pensions shall be subject to the following:

(1) The first payment on any pension shall be made for the month following the month in which the participant becomes eligible for a pension in accordance with Article II.

(2) The last payment to the pensioner shall be for the month in which the pensioner dies, but see the Widow's Benefit.

(3) Pension payments shall be payable on the first day of each month at the pensioner's last address of record.

(4) Any participant who continues to be employed by the Employer after his retirement shall not be entitled to receive pension benefits under this Plan until such time as he is no longer employed by the Employer.

(5) Years of service with other employers who are signatory to a Reciprocal Agreement to which this Plan is a party may be counted, under some circumstances, as credited service under this Plan; however, the amount of pension payable under this Plan shall be subject to the terms and conditions of the Reciprocal Agreement and under no circumstances shall this Plan be obligated to pay more than the pro rata pension due the participant under the Reciprocal Agreement.

ARTICLE IV—CREDITED SERVICE

A. *Credited Service.*

Subject to the limitations in paragraph B of this Article IV, credited service is a period during which the participant meets the requirements of subparagraphs (1), (2), or (3), below.

(1) A participant shall receive credit for a year of service for any year in which he worked as an employee either (a) at the Belle Ayr Mine of the AMAX COAL COMPANY for Employer, or, (b) in related service, and for at least 1,000 hours of service, with credit given for the next lowest ¼ years in the event any employee works less than 1,000 hours of service as follows:

750-999 hours, ¾ year
500-749 hours, ½ year
250-499 hours, ¼
249 hours or less, 0

It is recognized that it may be difficult to establish with certainty the credited service of a participant in the employment referred to above. In making the necessary determinations as to credited service, the Trustees may, in their absolute discretion, consider and rely upon any relevant and material evidence, including without limitation any or all of the following:

(a) A statement from the Administrator of a related plan certifying to the receipt of employer reports with respect to hours worked by the participant and stating the number of hours reported for the period covered by the statement.

(b) A statement from an employer certifying that the participant performed work for such employer entitling him to credited service during such period if such employer was known or reputed to be operating in the coal mining industry and was a signatory employer to the Related Plan.

(c) A statement from the secretary or other authorized officer of a local union of the United Mine Workers of America certifying that the participant was a member in good standing in such Union during such period.

(d) A W-2 form or check stub furnished for work performed during the period for any employer known

or reputed to have been operating in the coal mining industry and was a signatory employer to the Related Plan.

(e) A statement from the Social Security Administration to the effect that according to its records the participant was employed during the period by a named employer, which employer was known or reputed to be operating in the coal mining industry and was a signatory employer to the Related Plan.

(2) A participant shall receive credit for a year of service for any year in which he received state workmen's compensation payments pursuant to an award as a result of an occupational disease or injury sustained in the mine; provided, in the case of said occupational disease or injury, the participant had been so employed by the Employer in the Belle Ayr Mine for at least three (3) consecutive calendar years prior (but not necessarily immediately prior to) the disability or injury. Credit shall be given up to a maximum of four (4) years service credit from date of injury, or from the date of last employment in case of occupational disease provided the participant did not work regularly during the compensable period.

(3) A participant shall receive credit for a year of service for any year in which he served in the military service of the United States in any war, national emergency, or international police action, immediately following regular employment with Employer in the Belle Ayr Mine; provided, that credit for such service shall be limited to the original period of enlistment or obligated military service; and, provided, further, that the participant returned to work with Employer at the Belle Ayr Mine within twelve (12) months after his date of separation from the military service, unless he was precluded from doing so by service connected sickness, accident, or other disability, and returns to work for Employer at the Belle Ayr Mine when no longer precluded

by such disability. Service credit for the period of military service shall be computed in the same manner as described in paragraph (1), above.

B. *Additional Rules Concerning Credited Service.*

(1) A participant shall not be credited with more than one year of service for any calendar year by reason of any combination of the rules of this Article IV.

(2) Except as provided in Article V, service credits shall not be accrued subsequent to the effective date of pension payments.

(3) In the case of any participant, the last day of credited service shall be the last day on which the participant works as an employee for Employer at the Belle Ayr Mine, unless such participant continues to accrue credited service during the period for which he receives weekly sickness and accident benefits pursuant to the Collective Bargaining Agreement, in which case the last day of credited service shall be the last day of sickness and accident benefits are paid.

ARTICLE V—REEMPLOYMENT AFTER ATTAINMENT OF PENSION ELIGIBILITY

A. Any participant who has been retired and receiving a pension under this Plan and who shall be reemployed by an Employer shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, upon his subsequent retirement, be granted a pension equal to the sum of the pension he was previously receiving plus the excess of (i) over (ii) where (i) is the pension to which such participant would be entitled at the time of such retirement, based upon all years of credited service under the Plan and (ii) is the pension to which such participant would be entitled at the time of such retirement, based solely on his credited service at the time of his previous retirement.

B. Any participant eligible for a deferred vested pension under this Plan who shall be reemployed by the Employer prior to the commencement of pension benefits shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, be granted his credited service applicable to the deferred vested pension plus his credited service accrued after such reemployment.

ARTICLE VI—SURVIVING SPOUSE BENEFIT

A. (1) Except as provided in paragraph B., and subject to the requirements of the Pension Reform Act, there is hereby provided a Surviving Spouse Benefit for any participant who (a) has retired and is receiving a pension under this Plan, except a participant receiving a deferred vested pension who has not completed at least ten (10) years of credited service, (b) has not retired, but, at the date of his death, otherwise has met the eligibility requirements for an immediate pension under Article IIA., B., C., or D. under this Plan, and (c) is over age fifty-five (55) with at least ten (10) years of credited service and who has retired and is entitled to elect an immediate pension under Article IIA. or IIE. at the date of his death.

(2) The amount of such benefit shall be equal to fifty percent (50%) of the amount of the participant's pension at the time of his death or, in the event the participant dies after age fifty-five (55) at a time when he was eligible to elect a pension or to retire and receive a pension under Article II, but prior to his receipt of a pension, fifty percent (50%) of the amount of the pension he would have received if he had elected a pension or retired and become entitled to a pension as of the date immediately preceding the date of his death.

(3) The Surviving Spouse Benefit will not be effective unless the participant and his spouse have been married throughout the nine (9) month period ending on the date

of the participant's death or unless such nine (9) month requirement would be waived for purposes of determining entitlement to widow's insurance benefits under the Social Security Act.

(4) Payment to an eligible spouse will commence as of the first of the month following the month in which the participant's death occurs and the final payment shall be made for the month in which the spouse's death occurs.

B. (1) Any participant who is not employed by the Employer at the Belle Ayr Mine on the Effective date is not covered for a Surviving Spouse Benefit under this Article unless (a) he obtains at least three (3) years of credited service after the effective date, (b) he had ceased to be employed by the Employer as a result of (i) layoff, (ii) nonoccupational disability or accident, or (iii) occupational injury for which he was receiving workmen's compensation, or (c) he dies at a time when he is employed by the Employer at the Belle Ayr Mine.

ARTICLE VII—JOINT AND SURVIVOR ANNUITIES

Notwithstanding any other provision of this Plan, if a participant qualifies for a pension under this Plan, but is not covered for a surviving spouse benefit, the pension benefit otherwise provided to such participant shall be reduced actuarially pursuant to Appendix B and fifty percent (50%) of such reduced pension benefit will be continued, after the death of the participant, for the life of any qualified surviving spouse; provided, however, that such participant shall have a reasonable period before the starting date of his pension benefit to elect not to take a joint and survivor annuity as provided for in this Article and instead to receive a pension benefit for his life only which shall be computed pursuant to Appendix A and shall be the actuarial equivalent of the joint and survivor annuity computed under Appendix B. Prior to the exercise of an election under this paragraph, the participant must be provided with a written explanation of

the terms and conditions of the joint and survivor annuity and the effect of an election not to receive such annuity. In the event a participant elects not to receive a joint and survivor annuity, such election shall not become effective if the participant dies within a period of two (2) years beginning on the date of such election. A qualified surviving spouse shall be any spouse who has been married to the participant for at least nine (9) months prior to his death, unless such nine (9) month requirement would be waived for purposes of determining entitlement to widow's insurance benefits under the Social Security Act.

In the event that a participant who was subject to this Article and who was entitled to elect to receive a pension benefit shall die prior to receipt of a pension, his qualified surviving spouse shall be entitled to receive a survivor's benefit in the form of an annuity for life in an amount equal to fifty percent (50%) of the pension benefit the decedent would have received if he had elected to receive a pension beginning on the date immediately preceding the date of death.

Payment to a qualified surviving spouse under this Article will commence as of the first of the month following the month in which the participant's death occurs and the final payment shall be made for the month in which the spouse's death occurs.

ARTICLE VIII—MISCELLANEOUS

A. Determination of Eligibility.

The Trustees or such other named fiduciaries as may be properly designated shall have full and final determination as to all issues concerning eligibility for benefits.

B. General.

(1) The Trustees are authorized to promulgate rules and regulations to implement this Plan, and those rules and regulations shall be binding upon all persons dealing

with and participants claiming benefits under this Plan.

(2) No benefit payable under this Plan shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution, or encumbrance of any kind, and any attempt to accomplish the same shall be void.

(3) This Plan may be amended pursuant to the provisions of the Collective Bargaining Agreement or may be terminated during the life of the Collective Bargaining Agreement by agreement of the parties thereto; provided, however, that:

(a) this Plan shall not be amended or terminated in such manner as would cause or permit any part of the assets in the Pension Trust to be diverted to purposes other than the exclusive benefit of the participants and their beneficiaries, and

(b) this Plan shall not be amended to deny to a participant retroactively any benefits to which he was entitled under this Plan, unless such amendment is necessary to conform this Plan to, or to satisfy the conditions of any law, governmental regulations or ruling.

(4) Upon the termination of this Plan of the complete discontinuance of contributions to the Pension Trust, this Plan shall remain in force and effect for the period necessary to complete the payment of benefits in accordance with the terms of this Plan to the extent assets in the Pension Trust are available to pay such benefits.

(5) Forfeitures arising from the operation of the Plan shall not be used to increase the benefits which otherwise would be received under this Plan.

(6) Any participant or beneficiary whose claim for benefits under this Plan has been denied shall be (a) provided with adequate notice in writing setting forth the specific reasons for such denial, which notice shall be written in a manner calculated to be understood by the

participant, and, (b) afforded a reasonable opportunity for a full and fair review of the decision denying the claim by an appropriate named fiduciary or a person properly designated to carry out such responsibiilty.

(7) The Trustees are hereby authorized to allocate fiduciary responsibilities in any manner permitted pursuant to Section 405(c) of the Employee Retirement Income Security Act of 1974.

(8) Contributions to the Pension Trust to fund the benefits under this Plan shall be paid solely by the Employer in accordance with the greater of:

(a) a contribution rate by Employer of an amount, based on actuarial calculations, sufficient to provide for current service benefits and to amortize any unfunded past service liabilities over a period not to exceed thirty (30) years, or

(b) a contribution rate required under Section 412 of the Code to satisfy the minimum funding requirements.

And, provided, however, that Employer contributions hereunder shall in no event exceed the limitations on benefits and contributions set forth in Section 415 of the Code for pension plans.

All actuarial calculations shall be made by an enrolled actuary as provided in the Employee Retirement Income Security Act of 1974 and all calculations shall be in conformity with said Act.

Contribution by the Employer in compliance with this paragraph (8) shall be in complete and full discharge of Employer's obligations under this Plan and the Pension Trust and the Employer shall not be liable to any employee, participant, beneficiary of a participant or bargaining representative of any such employee or participant for contribution or additional contributions.

ARTICLE IX—PAYMENTS OF BENEFITS UPON EARLY TERMINATION OF PLAN

Notwithstanding any provisions of this Plan to the contrary, during the period described below, the benefits provided by the Employer's contributions for "restricted participants" who are those participants whose annual benefit provided by such contributions will exceed ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500), but applicable only to the twenty-five (25) highest paid employees as of the time of establishment of the Plan (including any such high paid employees who are not participants at that time, but may later become participants) shall be subject to the conditions set forth below. These conditions shall continue for a period of ten (10) years following the date of establishment of the Plan, and if at the end of ten (10) years the full current costs under the Plan have not been funded, these conditions shall continue until the full current costs are funded for the first time.

(1) Certain benefits (hereinafter called "unrestricted benefits") shall be paid to a restricted participant in full which have been provided by the Employer's contributions not exceeding the larger of the following amounts:

(a) TWENTY THOUSAND DOLLARS ($20,000); or

(b) An amount equal to twenty percent (20%) of the first FIFTY THOUSAND DOLLARS ($50,000) of the participant's average regular annual compensation multiplied by the number of years between the date of establishment of the Plan and whichever of the following dates shall be applicable:

(i) the date of termination of the Plan if the Plan is terminated within ten (10) years from the date of its establishment, or the date of the failure to meet full current costs if earlier;

(ii) in the case of a restricted participant described in this Article for whom such benefits become payable within ten (10) years after the date of establishment of the Plan, the date benefits become payable under the Plan, or the date of the failure to meet full current costs if earlier; or

(iii) in the case of a restricted participant described in this Article for whom benefits become payable under the Plan after the Plan has been in effect ten (10) years if the current costs of the Plan for the first ten (10) years have not been funded, the date of the failure to meet full current costs.

(2) If the Plan is terminated or the full current costs thereof have not been met at any time within ten (10) years after the establishment of the Plan, the benefits which any of the restricted participants described in this Article may receive from the Employer's contributions shall not exceed the benefit set forth in (1), above, and if at the end of ten (10) years from the date of establishment of the Plan the full current costs have not been met, the benefits which any of such participants may receive from the Employer's contributions shall not exceed the benefit set forth in (1), above, until the full current costs are funded for the first time.

(3) If a restricted participant described in this Article leaves the employ of the Employer or withdraws from participation hereunder when the full current costs have been met, the benefits which he may receive from the Employer's contributions shall not exceed the benefits set forth in (1), above, until the Plan has been in force for ten (10) years from the date of its establishment and the full current costs have been funded.

(4) These conditions shall not restrict the full payment of any insurance, death, or survivor's benefits on

behalf of a participant who dies while the Plan is in full effect and its full current costs have been met.

(5) These conditions shall not restrict the current payment of full retirement benefits for any retired restricted participant described in this Article in the form of level amounts of annuity not greater than the level annuity under the basic form of benefit provided in the Plan, while the Plan is in full effect and its current costs have been met.

(6) In the event of termination of this Plan within the period described in the second sentence of this Article, any excess benefits purchased by the Employer's contributions for restricted participants described in this Article shall be reduced to cash and distributed to unretired participants other than those restricted by this Article in the same proportion as the total contributions theretofore made for their benefits hereunder.

In the event that the Employer's Plan shall be changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in the event of the subsequent termination of the Plan or the subsequent discontinuance of contributions thereunder, then the provisions of this Article IX shall be applied to the Plan as so changed as if it were a new Plan established on the date of such change. However, the provision in Section (1) permitting payment in full of benefits based on at least TWENTY THOUSAND DOLLARS ($20,000) shall be applicable to the aggregate amount contributed by the Employer on behalf of the participant from the date of establishment of the original Plan, and, for purposes of determining if the participant's anticipated annual pension exceeds ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500), both the Employer contributions on the participant's behalf prior to the date of the change in the Plan and those expected to be made on his behalf subsequent to the date of change (based on his rate of compensation on the date of the change) are to be taken into account.

In the case of any increase in benefits under the Plan, those unrestricted benefits to be paid to a restricted participant in full shall thereafter be determined in the following manner.

Such benefits shall be paid in full which have been provided by the Employer's contributions not exceeding the larger of the following amounts:

(a) the Employer's contributions (or funds attributable thereto) which would have been applied to provide the benefits for the participant if the Plan had been continued without change as it existed prior to the effective date of the change; or

(b) TWENTY THOUSAND DOLLARS ($20,000); or

(c) the sum of:

(i) Employer funds (or funds attributable thereto) which would have been applied to provide benefits for the participant if the Plan had not been changed, but had been terminated the day before the effective date of the change; and

(ii) An amount equal to twenty percent (20%) of the first FIFTY THOUSAND DOLLARS ($50,000) of the participant's average regular annual compensation multiplied by the number of years between the effective date of the change and whichever of the following dates shall be applicable:

1. the date of termination of the Plan if the Plan is terminated within ten (10) years from the date of the change, or the date of the failure to meet full current costs if earlier;

2. in the case of a restricted participant described in this Article for whom such benefits become payable with ten (10) years

after the effective date of the change, the date benefits become payable under the Plan as changed, or the date of failure to meet full current costs if earlier; or

3. in the case of a restricted participant described in this Article for whom benefits become payable under the Plan as changed after the Plan as changed has been in effect for ten (10) years if the current costs of the Plan as changed for the first ten (10) years from the effective date of the change have not been funded, the date of the failure to meet full current costs.

ARTICLE X—SIGNATURES

This instrument shall be construed, regulated and administered under the laws of the State of ————————

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this instrument, effective January 12, 1975, to be signed by its proper officers, or representatives this ——— day of ————————, 1975.

Attest:

————————————

[SEAL]

EMPLOYER
AMAX COAL COMPANY

By: ————————————

Its: ————————————

TRUSTEES
COLORADO NATIONAL BANK

By: ————————————

Trust Officer

————————————

APPENDIX A

Actuarial Equivalence Factors for Deferred Vested Retirement Benefits Commencing Prior to Age 62

The following factors are to be multiplied by the full accrued benefit payable commencing at normal retirement age 62 to yield the equivalent benefit payable commencing at the indicated age:

AGE		Actuarial Equivalence	AGE		Actuarial Equivalence
Yrs.	Mos.	Factor	Yrs.	Mos.	Factor

APPENDIX B

Table of Percentages To Be Applied Against Pension Payable to Participant Under Joint and Survivor Annuities

Age of Spouse	Age of Participant							
	55	56	57	58	59	60	61	62
	%	%	%	%	%	%	%	%

Pension payable to Surviving Spouse will be equal to 50% of the Participant's Pension as reduced in accordance with the above table.

Company Proposal
December 8, 1975

Article IV Wages and Hours

Section (c) Mines Which Operate Six Days or Less Each Week

(8) No coal will be loaded from the pit on Sunday; except, in recognition of the special circumstances at the Belle Ayr Mine, the Employer shall be permitted to load coal from the pit on Sunday and to utilize such crews as are necessary in order to obtain maximum advantage from available transportation equipment. Nothing in this section shall be construed to prohibit processing and loading previously mined coal for shipment on any day, including Sundays and holidays, providing that employees engaged in such loading shall be covered by this Agreement and be paid at the applicable rate for work performed on Sundays and holidays.

For the Company _____

For the Union _____

Date _____

Company Proposal
December 8, 1975

Article IX—Regular Vacation

Section (b) Dates of Regular Vacation

(5) In order to facilitate continuing operations for the Employer and maximum vacation opportunities for Employees during summer months the Employer shall have the option to schedule two (2) or more vacation periods during the months of June, July and August wherein Employees may be scheduled for regular vacation and all mining and processing activities may continue. The Employer must make a written declaration setting forth the dates for such vacation periods at the mine and shall file a copy of this declaration with the President of the UMWA District in which the mine is located by May 15.

(6) It is understood that for the duration of this Agreement, if agreed to between the Employer and the Employee, each Employee covered by this Agreement shall have the option of accepting pay in lieu of taking regular vacation for the qualifying period in which he was employed.

For the Company _____

For the Union _____

Date _____

JOINT EXHIBIT 2

UNITED MINE WORKERS OF AMERICA

[SEAL]

UNITED MINE WORKERS' BUILDING
900 Fifteenth Street, N.W.
Washington, D.C. 20005
November 14, 1975

Mr. Elkins Payne
AMAX Coal Company
105 South Meridian Street
Indianapolis, IN 46225

Dear Mr. Elkins:

Please find enclosed a copy of the UMWA's latest proposal for an agreement to cover the Belle Ayr mine. Because of the need to meet as early as possible at the negotiating table, we have not duplicated proposals on which we do not intend to move and have forwarded only new proposals. In the interest of simplicity, we have consistently referred to substantive items in terms of their position in our last package, although as we have stated repeatedly, we are more than willing to make reasonable alterations in our traditional format.

To expedite your appraisal of this material, the attached explanation delineates each and every change we have made and gives the reasons for each. In some major areas, we have indicated the reasons why we cannot accede to suggestions which you have made. In other areas where we feel we might reach agreement, but where the responsibility for making a proposal is clearly incumbent upon you, we have expressed our willingness to consider seriously your suggestions if they are reduced to writing.

Without question, our new package makes substantial concessions and proposes serious compromises, many of which affect contractual protections which have existed

in UMWA agreements for years. I am sure that when you have assessed the impact of these changes, there can be no question of either our good faith or our strong desire to reach accord. By the same token, we will scrutinize closely AMAX's responses to determine whether or not there is any serious desire on your part to reach agreement with the UMWA. I have asked Richard Trumka to contact you immediately to set up a meeting to explain our proposals. However, if, in the interim, you need further information, please feel free to contact him or me.

Very truly yours,

/s/ Mike Trbovich
MIKE TRBOVICH

Enclosure

Attachment

EXPLANATION OF THE NOVEMBER 14, 1975 PROPOSALS OF THE UNITED MINE WORKERS OF AMERICA FOR AN AGREEMENT AT THE BELLE AYR MINE.

ARTICLE I—ENABLING CLAUSE

In its latest proposal, the United Mine Workers of America has agreed to the concept that the proposed Agreement should pertain to the Belle Ayr mine only. However, the Union feels very strongly that the Belle Ayr mine comprises any mining which will be done on the present leases held by AMAX in Campbell County, Wyoming. Therefore, the language of Article I has been restructured to insure that although the Agreement will apply only to the Belle Ayr mine, the UMWA will obtain jurisdiction of all new operations on those leases.

The International Union has withdrawn its proposal that all district agreements previously executed be carried forward in the new Agreement.

Although the UMWA is confident of the legality of the successorship clause, the Union understands the strong objections of Amax to the concept of successorship and has withdrawn its proposal in the interest of reaching agreement.

ARTICLE II—SCOPE AND COVERAGE

The UMWA has deleted all references to transportation by waterway in Article II, Section (a) since the Belle Ayr mine does not transport coal by water. At our last negotiating session, AMAX expressed the desire to define "processing" of coal to exclude on-site gasification or liquefaction. The UMWA is willing to consider seriously any proposal which AMAX makes in this regard.

Article II, Section (b) of the Union's former proposal has been amended to delete specific references to supervisory personnel which are not used at the Belle Ayr mine and specific references to limitations on the number

of legitimate supervisory personnel which the company may employ.

Article II, Section (f), *Application of this Contract to the Employers Coal Lands*, to which AMAX took strong objection has been deleted in its entirety.

Article II, Section (g) (2) has been amended to indicate that subcontracted work shall be performed specifically under UMWA standards.

The Union has adopted AMAX's proposal on construction work and incorporated it into Article II, Section (h) of its proposal:

ARTICLE III—HEALTH AND SAFETY

In Article III, Section (c) (1), the UMWA has incorporated the substance of its previously proposed Memorandum of Understanding on the training of health and safety committeemen. This change was made to accommodate AMAX's feeling that there should be no Memorandum of Understanding appended to the Agreement. After careful consideration, the UMWA decided not to proopse an examination for Mine Health and Safety Committeemen for several reasons. First, the choice of a Mine Health and Safety Committee is clearly a Union function in which management should have minimal participation. Second, our Constitution provides that any working miner may be a safety committeeman and that safety committeemen are to be chosen on the basis of local union choice without limitation. It is our opinion that to agree in the contract to allow the imposition of stringent restrictions upon that choice would violate Title IV of the Labor Management and Reporting Disclosure Act. Third, we think it is highly unlikely that the Employer and the Union will each be able to agree to the contents of an examination for Mine Health and Safety Committeemen. Fourth, even if they should agree, the possibility that those chosen as committeemen might fail could result in less than an adequate number of com-

mitteemen to represent the local union at any given time.

Article III, Section (c) (3) has been amended to include the substance of the Memorandum of Understanding included with our last proposal requiring that where possible imminent danger recommendations be reduced to writing. The UMWA cannot, however, agree to any infringement upon the right of the Health and Safety Committee to require the removal of affected persons from imminently dangerous areas of the mine. This should not, however, pose any substantial practical problem to the operation of the mine since it is our understanding that since the mine opened, not one imminent danger recommendation has been made by the Committee.

Although the Union has highly qualified personnel, fully capable of advising AMAX on mining plans, in the interest of compromise, the UMWA has abandoned its insistence on the inclusion of Article III, Section (b) requiring UMWA participation in the development of mining plans in any new Agreement.

The language of Article III, Section (1), *Safety Equipment and Protective Clothing Allowance*, has been amended to incorporate the suggestion of AMAX that the word "section" be substituted for the word "Agreement" in the last sentence as a protection against overpayments under this section. It is our understanding that in light of this substitution, AMAX will be willing to include electrical cap lamps in the safety equipment required to be provided by the Employer without charge.

In Article III, Section (n), the UMWA has accepted AMAX's suggestion that all sections relating to safety be incorporated in Article III, and the UMWA has adopted AMAX's proposal on Section (n), of March 14, 1975, with the following exceptions:

—The Union's original demand was that no Employee with less than ninety (90) days experience be required to work alone. AMAX's proposal was that this limitation be restricted only to "hazardous" areas. The UMWA has

attempted to compromise this difference by indicating its willingness to delineate the specific areas of the Belle Ayr mine which are not "hazardous" and incorporating them into Section (n) (1).

—In Section (n) (16), the Union has incorporated its previously proposed Memorandum of Understanding so that the section contains an explicit definition of the term "injury" and a procedure for resolving conflicts between the Employer and Employee regarding what injuries require removal from the mine.

—The Union had originally proposed that only pumper, engineers, etc. be required to "protect" the Employer's property. AMAX countered with a proposal that "Employees necessary" be required to protect the Employer's property and to refrain from suspending work. In Section (n) (17) the Union proposes to define specifically those Employees necessary to protect the Employer's property at the Belle Ayr mine.

—The UMWA has dropped its proposals originally contained in Article III, Section (n), paragraphs (1) and (5). These provided respectively that the Employer design, build and maintain coal waste impoundments and water impoundments in accord with safe and sound engineering practices; and that no Employee be required to lift more weight than he or she is capable of lifting.

ARTICLE IV—WAGES AND HOURS

As suggested, the UMWA's proposal on Article IV, Section (c) (6), has been amended to require that idle day work, premium time and overtime shall be shared within classification.

The Union has adopted AMAX's proposal on the processing of coal on Sundays and holidays which is now incorporated in Article IV, Section (c) (8) of our package.

The UMWA has added to Article IV, Section (c) (9) which specifically prohibits the use of swing crews on six day operations. This is a precautionary measure since

we do not understand AMAX to have used such crews in the past or to intend to use them in the future.

Article IV. Section (d) has been amended to require fifteen (15) days notice of a change in schedule instead of thirty (30). This is an effort to compromise on AMAX's demand for only five (5) days notice. In the second paragraph of Article IV, Section (d), the UMWA has adopted AMAX's broad language allowing the company to terminate a seven-day schedule at the mine for business reasons, force majuere, etc. Article IV, Section (d) (1) has been amended in line with AMAX's suggestion to require that idle day work as well as overtime and premium time be equally shared, and that each be shared within classification.

ARTICLE VIII—ALLOWANCES

The UMWA accepts AMAX's proposal on pay for military duty now incorporated in Section (d) of Article VIII, and although the Union feels strongly that a retroactivity allowance is fully justified the Union is dropping this demand in an effort to facilitate agreement.

ARTICLE XI—HOLIDAYS

During negotiations AMAX expressed concern that Employees designating another holiday in lieu of a holiday occurring during scheduled vacation would be paid more than triple time. The Union in Article XI, Section (f), has amended its proposal to foreclose such a possibility.

At our last meeting, AMAX indicated its willingness to pay regularly scheduled overtime as part of an Employee's birthday holiday. Article XI, Section (g) of the Union's proposal has been modified accordingly.

ARTICLE XII—REGULAR VACATION

The UMWA had initially suggested in conjunction with the adoption of Article XII, Section (b) (1) that

the Employee have the unilateral right to accept pay in lieu of his regular vacation for the year 1975. At our last meeting, AMAX objected and suggested that pay in lieu of regular vacation be a matter of mutual agreement. Our proposal has been adjusted accordingly.

At our last meeting, AMAX generally suggested but did not propose a regular vacation plan under which one-half the work force would take its vacation in June and one-half the work force would take its vacation in July. The Union feels that it is incumbent upon AMAX to make any formal proposal in this vein and will give any such plan serious consideration.

ARTICLE IV—CHECKOFF

At our last meeting, AMAX expressed reservations about checking off for the Credit Union and other voluntary deductions. The Union feels that both items are legitimate subjects of a checkoff, but in the interest of compromise has proposed to relieve the Employer of its obligation to checkoff "other voluntary deductions" where such a checkoff is not practicable. The Union has also incorporated into the body of its proposal the clear recognition that only when presented with written assignments is the Employer required to make checkoff deductions. In our opinion, this should dispel any problems which AMAX's attorneys feel ensue from the obligation of the company to "aid and assist" the Union, in checkoff matters. The proposal has also been modified by substituting the word "Employer" for "Employers" where appropriate.

ARTICLE XV—TRAINING

AMAX has made no proposal for representatives to assist in implementing training programs. At our last meeting, AMAX advanced several reasons for this decision. First, AMAX felt that this section should be lim-

ited specifically to training at the Belle Ayr mine. Second, AMAX was of the opinion that training is primarily an Employer responsibility. The Union has attempted to meet these objections by restructing the language of Article XV, Section (a) to make it clear that the training representatives provided for will function only in regard to the Belle Ayr mine and will function merely in an advisory fashion without infringing upon management's rights.

ARTICLE XVI—SENIORITY

The UMWA has incorporated the procedure for a reduction in force proposed by AMAX into the body of the Agreement. However, several changes should be noted. Throughout the section the words "presently able to do the work of the job" have been substituted for the term "qualification" to comport with the definition of seniority in Article XVI, Section (a); and the words "laid off" have been substituted for the word "terminated" to make it clear that laid off Employees have reemployment rights at the mine. Our notes reflect that AMAX has no quarrel with either concept, although it does object to Employees having reemployment rights at AMAX mines other than Belle Ayr.

In Article XVI, Section (e), the UMWA has amended its proposal to require the Employer to provide the Union panel custodian with an updated seniority list on a monthly basis. This suggestion made by the Union in the last negotiating session is calculated to minimize any problems which AMAX might otherwise experience with the accuracy of the records kept by Union panel custodians at the Belle Ayr mine. The section has also been amended to comport with the new time limits established by Section (g).

In Article XVI, Section (g) the UMWA has established definite time limits within which a panel member must respond to notification of the availability of a job

and within which he must return to work. These changes were made to correspond to suggestions advanced by AMAX at our last negotiating session.

In line with AMAX's suggestion at our last meeting, in Article XVI, Section (i) (1), the International Union has reverted to its original proposal which requires posting of job bids at customary bulletin boards rather than at portals.

The UMWA has incorporated into Article XVI a new section—(o)—which sets out our previously made proposal on the subject of strikers' reemployment rights at the Belle Ayr mine. The incorporation of this provision in the body of the Agreement was made to comply with AMAX's desire that there be no Memoranda of Understanding on substantive issues relating to the contract.

The UMWA has dropped its proposal for a Western conference to be sponsored by AMAX which was originally included in our proposed Memorandum of Understanding, but we do not withdraw our proposal that all litigation generated by the dispute at the Belle Ayr mine be dismissed.

ARTICLE XIX—SPECIAL RULES

AMAX has consistently rejected the concept that manning requirements for mining equipment should be included in the contract. Although the UMWA strongly disagrees, in an effort to reach agreement, we have withdrawn our proposals for manning contained in Article XVI, Section (b) (1). We have, however, maintained our position that, for safety reasons, a helper should be maintained on overburden drills, and we do not believe it is unreasonable to require the duties of oilers and groundmen to be spelled out in the contract.

ARTICLE XX—MISCELLANEOUS

Our records reflect some confusion over the question of our original proposal in Article XX, Section (g) per-

taining to house rent. Our position in this matter could be best clarified if AMAX would inform us in writing of the extent of any interest it has in coal miners' housing in the general area from which Belle Ayr's miners are drawn.

ARTICLE XXIV—DISTRICT AGREEMENTS

The UMWA has modified its proposal in Article XXIV, Section (b) to reflect AMAX's objection to reference to District Agreements.

ARTICLE XXVI—SEVERABILITY CLAUSE

In line with AMAX's original proposal, the United Mine Workers of America has modified Article XXVI so that if any provision of the Agreement is declared invalid all other provisions shall remain in full force and effect.

ARTICLE XXV—MAINTAIN INTEGRITY OF CONTRACT AND RESORT TO COURTS

Article XXV has been modified to relect the International Union's withdrawal of its proposal on successorship.

ARTICLE I

ENABLING CAUSE

THIS AGREEMENT is made this ——— day of ———, 19——, between the AMAX Coal Company; as party of the first part (hereinafter called "Employer") and the International Union, United Mine Workers of America (hereinafter called "Union"), on behalf of Local Union 1854 and each member thereof, as party of the second part. This Agreement covers its BELLE AYR mine and all other western surface sub-bituminous coal and lignite mines, coal lands, coal producing and coal preparation facilities, owned or operated, or held under lease by it, or by any subsidiary or affiliate at the date of this Agreement, or which may hereinafter (during the term of this Agreement) be put into production or use on the leases attached hereto as Addendum A.

WITNESSETH: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the Employees of the party of the first part employed at the Belle Ayr Mine, pursuant to a certification of representation issued by the National Labor Relations Board Case No. 27-RC-4914. It is further agreed that as a condition of employment all Employees at said western surface mines shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law, except in those exempted classifications of employment as hereinafter provided in this Agreement. This provision does not change the rules or practices of the industry pertaining to management. The Mine Workers intend no intrusion upon the rights of management as heretofore practiced and understood. It is the intent and purpose of the par-

ties hereto that this Agreement will promote and improve industrial and economic relationships in the said western surface mines and to set forth herein the basic Agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons covered by this Agreement. Management will not abridge the rights of the Employees as set forth in this Agreement.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE II

SCOPE AND COVERAGE

Section (a) Work Jurisdiction

The following work shall be performed solely by Employees represented by the United Mine Workers of America and is covered by this Agreement:

(1) Production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal;

(2) Transportation of coal in and around the mine and to a screening, crushing, washing or other preparation faciilty, or other mine-related operation (except by rail not owned by Employer);

(3) Repair and maintenance work normally performed at the mine site or at a central shop of the Employer and maintenance of mine roads; and

(4) Work customarily releated to all of the above.

Contracting, subcontracting, leasing and subleasing and construction work, as defined herein, will be conducted in accordance with the provisions of this Article.

Nothing in this Section will be construed to diminish the jurisdiction, express or implied, of the United Mine Workers.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE II

SCOPE AND COVERAGE

Section (b) *Exemptions Clause*

It is the intention of this Agreement to serve to the Employer and except from this Agreement an adequate force of supervisory Employees to effectively conduct the safe and efficient operation of the mines.

Coal samplers, weigh masters, watchmen, clerks, engineering and technical forces of the Employer, working at or from a district or local mine office are exempt from this Agreement.

All other employees working in or about the mines shall be included in this Agreement except essential Supervisors in charge of any class of labor inside or outside of the mines and who by the terms of Section (c) of this Article are forbidden from performing any work as defined in Section (a) of this Article.

The union will not seek to organize or ask recognition for such excepted supervisory Employees during the life of this contract.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE II

SCOPE AND COVERAGE

Section (g) *Contracting and Subcontracting*

The Employer may contract out or subcontract the following work:

(1) The transportation of coal from the mine site to a noncontiguous facility,

(2) Repair and maintenance work customarily performed by classified Employees at the mine or at a central shop shall not be contracted out except (a) where the work is being performed by a manufacturer or supplier under warranty, or (b) where the Employer does not have available equipment or regular Employees with necessary skills available to perform the work at the mine or central shop, provided, however, that the work shall be performed under UMWA standards;

(3) Mine reclamation work such as discing, seeding, and such other processes which occur after rough grading work (rough grading for reclamation shall not be contracted out).

For the Union

November 14, 1975

Date

For the Employer

ARTICLE II

SCOPE AND COVERAGE

Section (h) *Construction Work*

All construction of mine or mine-related facilities including theerection of mine tipples at the mine covered by this Agreement, which is not performed by the Employer, may be performed by such outside contractors as are designated by the Employer, and such work will be under the jurisdiction of the United Mine Workers of America in as far as is economically reasonable in a manner and to the extent permitted by law.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE III

HEALTH AND SAFETY

Section (c) *Mine Health and Safety Committee*

(1) At each mine there shall be a Mine Health and Safety Committee made up of miners employed at the mine who are qualified by mining experience or training and selected by the local union. The local union shall inform the Employer of the names of the Committee members. Committee members shall participate in a training program to be established pursuant to Article III, Section (c) (2). It is understood that a Mine Health and Safety Committee member who fails or refuses to participate in a training program which has been established and conducted pursuant to Article III, Section (c) (2) may be removed from the Committee upon thirty (30) days notice in writing to the local union by the Employer. The Committee at all times shall be deemed to be acting within the scope of their employment in the mine within the meaning of the applicable workmen's compensation law.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE III

HEALTH AND SAFETY

Section (c) *Mine Health and Safety Committee*

(3) The Mine Health and Safety Committee may inspect any portion of a mine and surface installations, dams or waste impoundments and gob piles connected therewith. If the Committee believes conditions found endanger the lives and bodies of the Employees, it shall report its findings and recommendations to the Employer. In those special instances where the Committee believes that an imminent danger exists and the Committee recommends that the Employer remove all Employees from the involved area, the Employer is required to follow the Committee's recommendation and remove the Employees from the involved area immediately. It is understood that except in unusual circumstances, the Committee's recommendations shall be made to the Employer in writing. In those unusual circumstances when such recommendations are not reduced to writing before presentation to the Employer, they shall be reduced to writing and delivered to the Employer promptly thereafter.

The Mine Health and Safety Committee shall, when engaged in its official duties as herein provided, be furnished transportation at the mine.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE III

HEALTH AND SAFETY

Section (1) *Safety Equipment and Protective Clothing Allowance*

Safety equipment and devices, including electric cap lamps, where used, personal ear plugs, prescription safety glasses or exclusive of eye examination costs, nonprescription safety glasses or goggles, shall be furnished by the Employer without charge. Hip boots or waders shall be kept by the Employer at the mine and issued for use on the job as unusual circumstances warrant. The Employee shall use and take reasonable care of equipment provided by the Employer. The Employer shall not be required to provide personal wearing apparel such as clothing, shoes, boots where worn as part of normal footwear, hats, belts, and gloves. Instead of supplying such personal wearing apparel, the Employer shall pay each Employee an annual protective clothing allowance. The protective clothing allowance will be $100 annually. This allowance will be paid to the Employee on the first payday following his employment if he remains actively employed on that date and on each employment anniversary date thereafter, if on his employment anniversary date he remains actively employed. It is the intention of the parties that each Employee covered by this Section shall receive three $100 payments (less any payments made after November 12, 1974, and prior to the effective date of this Agreement) during the term of this Agreement, and that such payments be made at the earliest practicable date following the Employee's employment date or anniversary thereof commencing November 12, 1974.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE III

HEALTH AND SAFETY

Section (n) *Special Safety Problem Areas*

To provide a specific contractual solution to safety problems which regularly occur and to insure uniform health and safety practices, the parties agree as follows:

(1) A new and inexperienced Employee with less than ninety (90) days experience in surface mining shall not be required to work alone in any areas where he cannot be seen or his cries for help heard except ———— ————, (The UMWA is willing to discuss specific exceptions for areas which are clearly not hazardous).

(2) Repairs on electrical components or circuits supplying power to any device or equipment located at a surface mine shall be done by qualified UMWA electricians except to the extent that such work may be performed by others under the provisions of Article II (Scope and Coverage). When an Employee believes that proper tests have not been made on electrical components or circuits to ensure their safe operation, or that an electrical circuit is not in compliance with applicable state or federal laws or regulations, the operator must comply with the Employee's request that the condition complained of be examined by a qualified person as defined above. No Employee raising a question regarding the safety of electrical circuits or components shall be subject to discipline or discrimination.

(3) All excavation machinery 65 yards and larger in size shall be equipped with intercom units or another no less effective communication device.

(4) All trucks operating on or around the mine property shall be equipped with at least two back-up mirrors, one located on each side of the truck, convenient for the operator's use.

(5) All machinery equipped with internal combustion engines shall have the exhaust system installed so as to minimize the Employee's exposure to fumes.

(6) When necessary to allay dust on haulage roadways and in the pit area, the road shall be watered or some other means used to allay the dust when needed. In the winter months when freezing may occur effective means shall be used to alleviate slippery conditions on such roadways.

(7) All entrances to blasting areas shall be guarded to prevent unauthorized access during blasting. Blasting activities shall be performed in accordance with applicable federal and state laws and regulations which are incorporated herein by reference.

(8) Whenever a haulage truck crosses a public road, safeguards will be taken to assure safe crossing.

(9) When an Employer transports coal from its tipple or other loading point by its train to another of its loading or dumping points, a classified Employee shall be assigned as a brakeman, switchman, or trip rider to assure safe operation.

(10) All haulage roads on mine property shall be maintained in safe and serviceable condition.

(11) The Employer shall provide an ample supply of potable drinking water to all Employees at all times when they are working and shall be responsible for assuring that water containers are kept clean.

(12) All cabs of vehicles and heavy machinery shall be adequately heated and ventilated to assure reasonable comfortable working conditions in all seasons.

(13) The Employer shall provide sanitary ventilated toilets for the use of Employees at the jobsite and shall be responsible for keeping those facilities clean.

(14) The Employer shall maintain at each mine a thoroughly equipped first-aid station and make appropriate arrangements for a doctor or nurse to be on call on short notice in cases of emergencies.

(15) The Employer shall provide a safe, quick and efficient means of transporting injured Employees from any section of the mine to nearby medical facilities.

(16) When an Employee is injured during his shift, he shall be promptly removed from the mine and paid for the complete shift. When an Employee becomes sick during his shift, and leaves because he cannot perform his work he shall be paid until he reaches the parking area. An injury requiring removal under these provisions must be of such a nature as to prevent the Employee from performing his duties, or of such nature as to seriously endanger his health. The initial determination that one or both of these circumstances exists is the Employee's prerogative and the Employer must, immediately upon request, remove a man who claims injury from the mine. This duty on the Employer's part, however, in no way impairs the Employer's right to challenge the Employee's right to pay for the shift during which he is removed. A conflict between the Employee and the Employer in this regard is to be settled through the grievance procedure.

(17) When required by the Employer, ————, ————, ———— and ———— shall perform their classified duties to protect the Employer's property and shall under no conditions suspend work but shall at all times protect all the Employer's property under their care. They shall perform all work necessary to protect the Employer's property. (The UMWA is willing to discuss the specific classifications which under normal circumstances would be necessary to protect the Employer's property).

(18) The Employer shall prohibit cutting, welding, or burning where adequate ventilation does not exist to remove the contaminated air.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE IV

WAGES AND HOURS

Introduction

Nothing in this Agreement, unless stated in this Article or except Article VII, Section (c), Reporting Pay, shall be construed as a guarantee of hours of work per day or per week. Employees required to work overtime shall be paid in accordance with the appropriate provisions of this Article.

Section (a) *Basic Work Week*

The basic work week shall begin at 12:01 a.m., Monday.

Section (b) *Basic Work Day*

The Employee's regular starting time shall be the time that he is scheduled to arrive at his designated work place. The Employee's regular quitting time shall be the time he is scheduled to depart from his designated work place.

Under the terms of this Agreement, an Employer may elect to operate its mine on either of the following schedules, provided that the daily wage rates established in Appendix A. Part I, are paid to Employees at mines who work a regularly scheduled seven and one-quarter (7.25) hours and that the daily wage rates established in Appendix A, Part II, are paid to Employees at mines who work a regularly scheduled eight (8) hour day:

(1) Seven and One-Quarter (7.25) Hour Day

When an Employer elects to operate its mine on shifts of seven and one-quarter (7.25) hours, the work day of seven and one-quarter (7.25) hours includes a staggered thirty (30) minutes for lunch and no suspension of operations throughout the day. Coal may be mined, processed and loaded for shipment on any one or more of these shifts with different crews. These seven and one-

quarter (7.25) hours shall be paid at straight time daily and hourly rates as provided in Appendix A, Part I. Overtime beyond seven and one-quarter (7.25) hours per day and thirty-six and one-quarter (36.25) hours per week shall, except as provided in Section (e), be paid for at time and one-half, with no pyramiding of overtime.

When an Employer elects to operate its mine on shifts of seven and one-quarter (7.25) hours, coal may not be loaded from the pit beyond seven and one-quarter (7.25) hours during each shift; provided, however, that where an Employer elects to operate on shifts of seven and one-quarter (7.25) hours, the regular work day of Employees engaged in the transportation, dumping, handling and preparation of coal; loading of coal for shipment; the operation of powerhouses, substations and pumps; and, those Employees operating stripping shovels, draglines, overburden drills, shooting and other overburden removal operations may be extended to eight (8) hours, but shall be paid in accordance with Appendix A, Part II, of this Agreement and Section (b) (2) hereof.

(2) Eight (8) Hour Day

When an Employer elects to operate its mine on shifts of eight (8) hour, the work day of eight (8) hours includes a staggered thirty (30) minutes for lunch and no suspension of operations throughout the day. Coal may be mined, processed and loaded for shipment on any one or more of these shifts with different crews. These eight (8) hours shall be paid at straight time daily and hourly rates as provided in Appendix A, Part II. Overtime beyond eight (8) hours per day and forty (40) hours per week shall be paid for at time and one-half except as provided in Section (e), with no pyramiding of overtime. When an Employer elects to so operate its mine on shifts of eight (8) hours, all Employees scheduled to work shall be scheduled for eight (8) hour shifts, and the Employer may so operate for the entire eight (8) hour period each shift or shifts.

Section (c) *Mines Which Operate Six Days or Less in Each Week*

At mines which mine and process coal (6) days or less during any week, the following rules shall apply:

(1) Work on the seventh consecutive day and holidays is optional for the Employee, but nothing in this Section (c) (1) shall be construed to require the Employer to guarantee work on the seventh consecutive day or holidays. No Employee shall be disciplined or discriminated against for exercising his right to refuse optional work.

(2) All employees, including those listed in paragraph (3) of this section, shall be given a fair and equal opportunity to work the same number of days per week as the number of days on which coal is loaded from the pit, and shall be given equal opportunity to share the available work on premium days. Laying off individual Employees during the week for the purpose of denying them work as stated in this Section (c) (2) is prohibited.

(3) The Employer shall have the right to schedule maintenance crews, powerhouse and subsection employees, pumpers, bathhouse men, firemen, switchboard operators and other similar employees for Saturday and Sunday work and schedule their day(s) off during the first five (5) days of the work week.

(4) Except in cases of emergency, all Employees required to perform idle day work on Saturday will be notified by the preceding Thursday. The Employer shall post a list of the Employee required to perform idle day work on Saturday before the end of the day shift on the Thursday prior to the Saturday on which such work is required.

(5) An Employee called to work on idle days at a rate less than his regular classified rate may decline to perform that work at lower rates on idle days.

(6) Opportunity for overtime, idle day work, and premium time must be equally shared within classification in accordance with past practice and custom. An idle day

work roster must be kept up to date and posted at each mine for the purpose of distributing idle day work on an equitable basis to the extent practicable. The Employer shall also insure that all overtime, idle day and premium time worked shall be equally shared within each classification to the extent practicable.

(7) The Employer shall have the right to schedule stripping shovels, draglines, overburden drills, shooting and other overburden removal operations on a continuous seven (7) day basis. The Employer shall establish a swing shift for such continuing seven (7) day operations. The regular crew shall be assured of at least six (6) scheduled days work each week except during weeks in which holidays occur; or, in circumstances beyond the control of the Employer, such as, but not limited to, transportation disruptions, abnormal wheather conditions, major equipment or facility failures, power failures and work stoppages.

(8) No coal will be loaded from the pit on Sunday. Nothing in this section shall be construed to prohibit processing and loading previously mined coal for shipment on any day including Sundays and holidays, provided that Employees engage in such loading and processing for shipment shall be covered by this agreement and be paid at the applicable rate for work performed on Sundays and holidays.

(9) There shall be no swing crews for classifications regularly scheduled to work six (6) days or less each week.

Section (d) *Mines Which Operate Seven (7) Days Each Week*

An Employer may elect to operate its mine, and to mine, process and load coal for shipment on each of seven (7) days. Coal may be mined, processed and loaded for shipment on any one or more shifts each day with different crews. If the Employer elects to mine, process and load coal for shipment on Sunday it shall give at least fifteen (15) days notice to its Employees.

The Employer may elect to suspend the seven (7) day operating schedule and/or revert to the six (6) day or less operating schedule for bona fide business reasons; force majeure situations; and, circumstances beyond the control of the Employer including but not limited to transportation disruptions, customer-related problems and major equipment or facility failures.

When an Employer operates on a schedule of seven (7) days each week, the following conditions shall be observed:

(1) For such seven (7) day operations, the Employer shall insure that opportunity for overtime, idle day, and premium time work are equally shared within each classification in accordance with past practice and custom. The Employer shall assure Employees of at least six (6) scheduled days work each week except weeks in which holidays occur; or in circumstances beyond the control of the Employer including but not limited to abnormal weather conditions, transportation disruptions, power failures, work stoppages and major equipment or facility failures.

(2) A swing shift relief shall be established for each clasification which is regularly scheduled for seven (7) days a week. An earnest effort will be made to schedule the swing Employee or Employees to work on the same shift each day, but Employees assigned to swing shift relief shall work on variable shifts, as required, to safely and efficiently relieve the regular crews.

It is not the intent of this provision to authorize introduction of shift rotation where it has not been practiced as a part of a system for seven-day operation. When a plan introduced by the Employer for seven (7) day operations does not satisfy the requirements of this Section, any Employee affected may file a grievance, and the arbitrator shall be authorized to direct the Employer to alter or amend its plan to comply with the requirements of this Section.

(3) Work of the Employee on the seventh consecutive day and holidays is optional, but nothing in this Section

(d) (3) shall be construed to require the Employer to guarantee work on the seventh consecutive day or holidays. No Employee shall be disciplined or discriminated against for exercising his right to refuse optional work.

(4) Work scheduled by the Employer beyond ten (10) hours on any day and fifty (50) hours in any week is optional for the Employee, but nothing in this Section (d) (4) shall be construed to require the Employer to guarantee hours of work. No Employee shall be disciplined or discriminated against for exercising his right to refuse optional work.

(5) Work shall be scheduled in all classifications covered by this Section (d) on each day in which coal is mined and processed except as provided in Section (d) (8) below.

(6) Employees on swing crews shall be paid at the rate required for the job on which they relieve.

(7) Opportunity for overtime and premium day work must be shared equally. A premium day work roster must be kept up to date and posted at each mine for the purpose of distributing premium days on an equitable basis to the extent practicabl.e The Employer shall insure that overtime and premium day work shall be equally shared within each classification to the extent practicable.

(8) An Employer shall not be required to schedule work for an Employee for more than six (6) days or six (6) shifts per week except in the equal division of optional work. Classification involving only intermittent utilization during the mining and processing cycle need not be scheduled for seven (7) days.

Section (e) *Saturday, Sunday and Premium Work*

Work performed on Saturday shall be paid at time and one-half or rate and one-half, except that double time or double rates shall be paid for all work in excess of seven and one-quarter hours, for Employees working a seven and one-quarter hour day, or in excess of eight

hours for eight-hour Employees. Work performed on Sunday shall be paid for at double time or double rates. Work performed on holidays shall be paid for at triple time or triple rates. There shall be no pyramiding of overtime.

Section (f) *Change of Shift Length or Days of Operation*

When an Employer changes the hours or days (that is, from six (6) days or less to seven (7) days or vice versa) of operation of its mine, it shall be required to use its best efforts to minimize the effects of such occurrence and to schedule work equally for all Employees to the extent practicable.

Section (g) *Standard Hourly and Daily Wage Rates*

The standard daily and hourly wage rate paid for work performed under this Agreement is set forth in Appendix A. Part I of Appendix A establishes the rates of pay for the various classifications based upon the standard seven and one-quarter (7.25) hour work day. Part II of Appendix A establishes the rates of pay for the various classifications where an eight (8) hour work day is established. The standard daily and hourly wage rate for each job classification shall be the standard daily and hourly wage rate for all job titles included in such classification as listed in Appendix B. The list of job titles within each classification indicates only the rates to be paid to Employee bearing such job titles. No Employer shall have authority to introduce into a mine any job title or any classification which has not been listed in Appendix B, unless ordered to do so by an arbitrator as set out in this section, or unless by mutual agreement between the parties.

Where an Employee believes that the duties which he is required to perform are appropriate to a job title and classification other than those which have been assigned to him, he may file and process a grievance under Article XXI (Settlement of Disputes) to be classified under

the proper job title. Should an arbitrator decide that the complaining Employee has been improperly classified, he shall order the Employer to properly classify him under the proper job title. If the new classification involves a higher rate, the Employer shall reimburse him for all wages he would have earned had he been properly classified, retroactive to the date he filed his grievance. The time limit for the filing of grievances imposed by Article XXI (Settlement of Disputes) shall not be applicable to this Section.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE VIII

ALLOWANCES

Section (d) *Military Duty*

When an Employee is called to active duty in the armed forces, the national guard or the reserves, including emergency call-ups and summer encampment training, he shall be excused from work. Upon proof of service and the amount of pay received therefor, the Employee is entitled to receive a maximum of two (2) weeks pay in any calendar year at his regular rate, including payment for any regularly scheduled overtime and premium pay, less any amounts received by the Employee from the armed services, the national guard or reserves for such period.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE VIII

ALLOWANCES

Section (e) *Personal or Sick Leave*

(1) During each calendar year of this Agreement, beginning with the year of 1975, each classified Employee with one year or more of classified service with his Employer shall become eligible for Personal or Sick Leave, at his regular rate for any five (5) working days on which the Employee is absent from work for reasons of sickness, accident, emergency, or personal business.

(2) Paid Personal or Sick Leave shall not be utilized for any period of less than one (1) full regular workday.

(3) To the extent practicable, the Employee shall notify his immediate supervisor at least twenty-four (24) hours in advance of the shift or shifts for which he will be unable to report. In the event of sudden sickness, accident, or emergency, the Employee shall make a reasonable effort to notify his immediate supervisor at least two (2) hours in advance of the shift on which he is scheduled to work.

(4) If, at the end of any calendar year, an Employee has not exhausted the paid Personal or Sick Leave for which he becomes eligible under this Section he shall receive pay in lieu of such leave at his regular rate, as provided in paragraph (1) above. His regular rate shall be the rate in effect at the end of such calendar year for the payroll period which includes the last workday of the calendar year.

(5) Personal or Sick Leave days shall not be counted as part of the seven (7) day waiting period under the sick and accident pay program unless the Employee is disabled as a result of sickness or accident so as to be prevented from performing his regular classified job and his disability is certified by a physician legally licensed to practice medicine.

(6) Any active Employee with less than one (1) year's standing as of January 1 of any year covered by this Agreement (beginning January 1, 1975) shall be entitled to one (1) day of Personal or Sick Leave for each fifty (50) days worked in the previous calendar year, but not to exceed five (5) days of such leave.

(7) If, at any time during the calendar year, an active Employee terminates his employment, he shall receive pay at his regular rate for all Personal and Sick Leave days to which he is entitled under paragraphs (1) and (6) of this section which he has not taken at the time of his termination. His regular rate shall be the rate in effect at the time of his termination. For example, an active Employee with more than one year of service who terminated his employment in July and who had used one day of his Personal and Sick Leave would be entitled to pay for four days at his regular rate. An active Employee with less than one year's standing who had worked 100 days in the previous calendar year who terminated his employment in July and who had used one day of his Personal or Sick Leave would be entitled to pay for one day at his regular rate.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE XI

HOLIDAYS

Section (f) *Holidays Worked During Vacation Period*

When a holiday occurs during an Employee's scheduled vacation, he shall be paid for the holiday not worked in addition to his vacation pay and shall designate another day he wishes to take as a holiday. The parties agree that this section requires that a holiday which occurs during a scheduled vacation should be treated the same as any other holiday for all purposes. This means that when an Employee designates a day outside of his vacation period as a holiday and then chooses to work that day, he will be paid double time for working his regular shift on that day. Thus, having already been paid one shift at his regular rate for the holiday during vacation, he will be paid a total of triple time for having worked on the holiday designated.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE XI

HOLIDAYS

Section (g) *Birthday Holidays*

If the Employee's birthday occurs on a day when the mine or other facility at which he is employed works, the Employee has the option of taking his birthday off and receiving one shift of pay at his regular rate including regularly scheduled overtime, or he has the option of working on his birthday and receiving triple time for all time worked.

If the Employee's birthday falls on Saturday and the mine does not work, and he is not otherwise entitled to perform idle day work, he is entitled to his regular rate for the birthday holiday. If the Employee does work on his Saturday birthday, he is entitled to triple time, which is three times his straight-time rate, for all time worked.

If an Employee's birthday falls on February 29 or on any other scheduled holiday or during the vacation period or on a Saturday or Sunday, he may elect to designate another day to celebrate his birthday holiday.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE XII

REGULAR VACATION

Section (b) *Dates of Regular Vacation Period*

(1) Beginning at the start of the day shift on Saturday, June 28, 1975, and ending at the beginning of the day shift on Saturday, July 12, 1975; or beginning at the start of the day shift on Saturday, July 12, 1975, and ending at the beginning of the day shift on Saturday, July 26, 1975. It is understood that for the calendar year of 1975, by mutual agreement between the Employee and the Employer, each Employee covered by this Agreement shall have the option of accepting pay in lieu of taking the regular vacation. Each Employee shall advise the Employer whether he wishes to take his vacation or accept pay in lieu thereof, in writing, within fourteen (14) days of the effective date of this Agreement.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE XIV

CHECKOFF

During the term of this Agreement, the membership dues, including initiation fees, and assesments of the United Mine Workers of America and its various subdivisions, credit union, and except where not practicable, other voluntary deductions, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employer covered by this contract and shall be remitted by the Employer to the properly designated officers of the Union for distribution to its various branches. Such remittances shall be accompanied by an itemized statement showing the name of each Employee, his Social Security Number, hours worked, and the amount checked off for dues, initiation fees, and assessments together with a list of Employees from whom dues, initiation fees and assessments have not been collected. In order that this section may become effective and operate within the limitations of the Labor-Management Relations Act, 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the Employer, and the Employer agrees to assist and cooperate in obtaining written assignments from each Employee so employed. It is understood, however, that the Employer is not required or authorized to make checkoff deductions from an Employee's wages except upon presentation of a written assignment authorizing that deductions be made. Upon the presentation to the Employer of such assignments, in such reasonable form as time and circumstances, look-to be the continuous and uninterrupted production of coal, may allow, said Employer shall make deductions so authorized and delivered the same to the designated District

officer of the Union or to such authorized representative as may be designated by the Union.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE XV

TRAINING

Section (a) *Priority*

The parties agree that the establishment of effective training programs for Employees is essential to safe and efficient production of coal at the Belle Ayr mine. The International Union and AMAX shall each, therefore, assign a trained representative to assist the Employer in developing and implementing the various training programs at the Belle Ayr mine provided for herein. It is understood that the functions of these representatives shall be purely advisory.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE XVI

SENIORITY

Section (v) *Reduction in the Work Force*

In all cases where the working force is to be reduced, Employees with the greatest seniority at the time shall be retained provided that they have the ability to perform available work.

It is understood that the following procedure will be followed in connection with the implementation of reductions in work force under this Agreement:

In all cases where the working force is to be reduced, Employees with the greatest seniority shall be retained providing they have the ability to step in and perform the available work.

The following procedure shall be used to reduce the work force:

Step 1: Management shall determine the number of men with the least seniority to be reduced in each classification. These men shall be identified as displaced Employees.

Step 2: The men retained in classification as a result of Step 1 shall be reassigned by seniority to fill vacancies within the classification.

Step 3: Management shall prepare a listing, in order of seniority, of all displaced Employees. That list shall identify the qualifications of displaced Employees from their previous employment history and their employment history with their present Employer.

Step 4: List all retained Employees at the mine in seniority order identifying the Employee's classification and shift.

Step 5: The list of displaced Employees shall be compared with the list of retained Employees and the senior displaced Employee will be considered for the job held by the junior retained Employee.

(a) If the senior displaced Employee is presently able to step into and perform the work of the job, he will be assigned to the job of the junior retained Employee and the junior retained Employee's name shall be placed in proper seniority sequence on the displaced list. This process shall be repeated until the appropriate number of senior able men are placed back into the work force.

(b) If the senior displaced Employee is not presently able to step into and perform the work of the job of the junior retained Employee, he shall be considered for assignment to the job of the next junior retained Employee until the displaced Employee is assigned a job, or, he reaches a level of seniority in the retained group where greater seniority exists.

Step 6: Upon completion of Step 5 those Employees remaining on the displaced list will be laid off in a force reduction.

Vacancies created during force reduction procedures are not subject to Article XVI, Section (i), Job Bidding.

To insure a minimum disruption in mine operations, the District representative of the Union and the Mine Committee shall be notified by the Employer of a proposed reduction in working force promptly after such determination has been made. However, management shall complete the lists required by Steps 1, 2 and 3, as set forth above prior to the time of any group meetings

between it, the UMWA District representative, and the Mine Committee are convened for the purpose of discussing the reduction in work force.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE XVI

SENIORITY

Section (e) *Panel Custodians*

The superintendent of the mine and the Recording Secretary of the local union shall be joint custodians of the panel records. So that panel records are kept up to date, the Employer shall provide an updated seniority list for all active and laid-off Employees at the mine on a monthly basis. It shall be the obligation of the laid-off Employee to keep the custodians of all mine panels on which he is entitled to place his name informed of any change of address and/or telephone number where he may be regularly reached. Notice to the last known address of the laid-off Employee by certified mail shall be sufficient notice of recall. The Employee so notified may either accept or reject the job which is available; but if the Employee rejects a job which he has listed as one to which he wishes to be recalled or fails to respond as set out in Section (g), below, his name shall be removed from the panel at that mine.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE XVI

SENIORITY

Section (g) *Right to be Recalled*

Any person on the panel list who secures casual or intermittent employment during the period when no work is available for him at the operation shall in no way jeopardize his seniority rights while engaged in such temporary employment. Any panel member to be recalled to work shall be notified by the Employer of the specific vacancy by registered mail. The panel member shall respond by letter postmarked no later than fifteen (15) days from the postmarked date of the letter of notification of the job vacancy as to whether he accepts or rejects the job offered. If the panel member accepts the job vacancy, he must report to work no later than thirty (30) days from the postmarked date of notification of the job vacancy. If the affected panel member does not respond to the job offer or report to work within the time limits indicated, he shall lose his seniority rights at the operation and shall have his name removed from the panel list.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Union

ARTICLE XVI

SENIORITY

Section (i) *Job Bidding*

Filling of all permanent vacancies and new jobs created during the term of this Agreement will be made on the basis of mine seniority as set forth in the following procedure:

(1) The job or vacancy shall be posted by managements in a conspicuous place at customary bulletin boards of the mine for a period of seven (7) calendar days, but no less than five (5) production days, and will be properly identified as to job title, wage rate, and at nonrotating mines as to shift. If the new job or vacancy does not exist, the estimated date when the job or vacancy will exist will also be posted.

* * *

For the Union

November 14, 1975

Date

For the Employer

ARTICLE XVI

SENIORITY

Section (e) *Return to Work*

As a part of the consideration for the execution of the Agreement and this Memorandum of Understanding, all striking Employees whether employed by AMAX prior to January 12, 1975, or whether initially hired after January 12, 1975, shall be entitled to return to work, retaining their original seniority dates. As of the effective date of this Agreement, all jobs covered by the Agreement shall be deemed vacant and shall be filled in accordance with Article XVI, Section (i) Job Bidding.

_____

For the Union

November 14, 1975

_____

Date

_____

For the Employer

ARTICLE XIX

SPECIAL RULES

Section (b) *Manning of Certain Mining Equipment*

(1) *Duties of Oiler*

The oiler shall service the shovel or dragline to which he is assigned. Oilers servicing machines under 12 yards in size shall not be required to be within the swing of the boom. On other machines, the oiler will stay within the swing of the boom of the machine to which he is assigned except when performing duties customarily associated with his job at the machine. The regular classified oiler shall, as part of his duties, learn to perform the duties of the machine operator through an on-the-job break-in under the machine operator's guidance. After such break-in period, the oiler shall operate the dragline or shovel to periodically relieve the operator as directed by the Employer. When performing the operator's duties, the oiler shall be paid the operator's rate.

(2) *Duties of Groundman*

The groundman's duties shall include the following: knocking down the roll; steering the machine; leveling the machine; moving cable for the machine; and perform such other duties as are customarily associated with his job at the machine.

(3) *Overburden Drill Helper*

A drill helper shall be assigned to pneumatic drills drilling holes 6 inches or larger in diameter in overburden. The drill helper shall be at the drill to which he is assigned while the drill is in operation.

_____

For the Union

November 14, 1975

_____

Date

ARTICLE XXIV

DISTRICT AGREEMENTS

Section (b) *Prior Practice and Custom*

This Agreement supersedes all existing and previous contracts except as incorporated and carried forward herein by references; and all local agreements, rules, regulations and customs heretofore established in conflict with this Agreement are hereby abolished. Except where abolished by mutual agreement of the parties, all prior practice and custom not in conflict with this Agreement shall be continued, but any provisions in local agreements providing for the levying, assessing or collection of fines or providing for "no-strike," "indemnity," or "guarantee" clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement. Whenever a conflict arises between this Agreement and any District or local agreement, this Agreement shall prevail.

For the Union

November 14, 1975

Date

For the Employer

ARTICLE XXV

MAINTAIN INTEGRITY OF CONTRACT AND RESORT TO COURTS

The United Mine Workers of America and AMAX agree and affirm that, except as provided herein, they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Disputes" Article of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract and by collective bargaining without recourse to the courts.

_____

For the Union

Date

November 14, 1975

_____

For the Employer

ARTICLE XXVI

SEVERABILITY CLAUSE

In the event any provision of this Agreement is declared invalid, all other provisions of this Agreement shall remain in full force and effect.

For the Union

November 14, 1975

Date

For the Employer

EMPLOYER BANK
EMPLOYER TRUSTEE
VERSION

AMAX COAL COMPANY BELLE AYR MINE PENSION TRUST AGREEMENT

Pursuant to the Collective Bargaining Agreement, there is hereby established a trust to be known as the "AMAX COAL COMPANY BELLE AYR MINE PENSION TRUST" (hereinafter referred to as "Pension Trust") for the purpose of making benefit payments pursuant to the provisions of the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN. The provisions of the Pension Trust are effective January 12, 1975, and are as set forth below.

ARTICLE I

The following terms shall have the meanings herein set forth:

(1) "Collective bargaining agreement" means collective bargaining agreement between AMAX Coal COMPANY and Local Union No. 1854 of the United Mine Workers of America for the Belle Ayr Mine dated ————, 1975, and any amendments thereto or renewals thereof.

(2) "Employer" means AMAX COAL COMPANY and any successor of said corporation. A successor Employer shall be subject to the provisions of the Pension Reform Act as to said Act's requirements concerning years of service with a predecessor Employer, participation, vesting, funding and other similar provisions.

(3) "Plan" shall refer to the "AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN" established pursuant to the Collective Bargaining Agreement.

(4) "Trustees" shall mean the trustees of this Trust designated in accordance with the provisions of Article II hereof, who shall be the named fiduciaries required pursuant to Section 402 of ERISA; provided, however, that this instrument may be amended pursuant to Artricle X hereof to designate other or additional named fiduciaries.

(5) "Pension Reform Act" means the provisions of the Internal Revenue Code of 1954, as amended, and the Labor Law, including the Employee Retirement Income Security Act of 1974 ("ERISA"), and including all interpretations of said Code, Law and Act, by regulations and rulings, promulgated or prescribed in compliance therewith by the Secretary of Treasury and the Secretary of Labor. References to the Code shall be deemed to refer to the Internal Revenue Code, the Labor Law and the Pension Reform Act as such laws may be subsequently modified, amended, replaced or amplified by any Federal statutes and regulations, rulings, or interpretations of similar application or import which are in compliance with the Code.

ARTICLE II

The Pension Trust shall be administered by a Board of two (2) Trustees appointed by the Employer. The Employer may remove any Trustee for cause or not.

In the event of resignation, death, removal, inability or unwillingness to serve of a Trustee, the Employer shall appoint a successor.

The Trustees shall be ——————("Individual Trustee") of —————— and the COLORADO NATIONAL BANK ("Bank Trustee"), having its principal office at 17th Street and Champa, Denver, Colorado 80202. Said Two Trustees so named and designated shall constitute the Board of Trustees to administer the the Pension Trust. The Bank Trustee is the custodian of the assets of the Pension Trust and is solely responsible

for investments and investment policy and the Individual Trustee is responsible for the administration of the Plan only.

It is agreed that the Trustees herein provided for, or their duly appointed successors, shall serve as long as the proper continuation and administration of said Trust shall require.

This Trust shall have its principal place of business at ————————————, or such other place as may be determined by the Trustees.

ARTICLE III

The Pension Trust established with the Trustees hereunder is an irrevocable trust which shall endure as long as the purposes for its creation shall exist. The Pension Trust consists of such sums of money and other property, acceptable to the Trustees, as from time to time shall be held by or paid or delivered to the Trustees and such earnings, profits, and increments thereon as may occur from time to time. All such money and other property delivered to the Bank Trustee, including Employer contributions, and all investments and reinvestments made therewith or proceeds thereof and all earnings and profits thereon, less the payment which at the time of reference shall have been made by the Trustees as authorizd herein, are referred to herein as the "assets of the Pension Trust". The assets of the Pension Trust shall be held by the Bank Trustee and be dealt with in accordance with the express provisions of this instrument and the requirements of law.

The moneys to be paid into the Pension Trust shall not in any maner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, i.e., the beneficiaries of said Pension Trust under the terms of this instrument.

ARTICLE IV

The Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, are directed and authorized (a) as to the Bank Trustee, to hold, to investment and to reinvest the assets of the Pension Trust as provided herein; (b) to pay moneys from the Pension Trust in accordance with the terms of the Plan for the purpose of distributing the benefits payable under the Plan, and (c) to pay the cost of administration of the Pension Trust as hereinafter provided.

In exercising their powers and duties as provided in this Article IV and in other Articles hereof, the Trustees shall be subject to the Pension Reform Act, including specifically the Fiduciary Responsibility provided therein and under no circumstances shall the Trustees engage in any prohibited transaction as provided by Section 406 of ERISA and Section 4975 of the Code, and at all times, the Trustees shall conduct themselves and the business of the Pension Trust according to the requirements of the Pension Reform Act.

ARTICLE V

The Bank Trustee shall have full discretionary powers of management and control, of sale and resale, in fee simple or otherwise, mortgage, lease, and pledge, of the assets of the Pension Trust, and shall not be restricted to investments in securities or property of the character now or hereafter authorized by law or rules of the State of Colorado. The assets of the Pension Trust shall be invested and reinvested, without distinction between principal and income, in securities and other forms of property, including, but not limited to, real estate, corporate stocks (common and preferred), debentures, bonds and other obligations whether or not secured. The Bank Trustee shall not be limited to the amount or type of any investment in relation to the amount of type of invest-

ments constituting the Trust as a whole, except as provided by the Pension Reform Act.

The Trustees or such other persons as may be properly designated pursuant to Article IX hereof may, in their discretion, keep such portion of the assets of the Pension Trust in cash or cash balances as the Trustees may determine to be reasonably necessary to satisfy the current needs of the Trust.

ARTICLE VI

Neither by way of limitation nor in derogation, and in amplification of any powers granted herein, but in compliance with the delegation of custody and investment responsibility solely to the Bank Trustee and that the Individual Trustee shall be concerned with administration of the Plan, the Bank Trustee, the Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, are further authorized:

(1) To purchase, sell, exchange, convey, transfer or dispose of, and also to grant options with respect to, any property, whether real or personal, at any time held by them and to make any sale, private or public;

(2) To retain, manage, operate, repair, improve, develop, preserve, mortgage or lease for any period any real property interests or rights held by the Trustees upon such terms and conditions as the Trustees deem proper, either alone or by joining with others, using other trust assets for any of such purposes if by them deemed advisable; to modify, extend, renew, or otherwise adjust any or all of the provisions of any such mortgage or lease, including the waiver of rentals, if by them deemed advisable;

(3) To compromise, compound and settle any debt or obligations due from third persons to them or to third persons from them, as Trustees hereunder, and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default or otherwise enforce, any such

obligations; (4) To vote in person or by proxy and to give general or special proxies or powers of attorney, with or without power of substitution, on any securities or other investments held by them;

(5) To exercise any rights or options appurtenant to any securities or other property held by them for the conversion thereof into other securities or property, or to exercise any rights or options held by them to subscribe for or purchase additional securities or other property, and to make any and all necessary payments with respect to any such conversion or exercise;

(6) To join in, dissent from or oppose, the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which they may hold stocks, bonds or other securities or in which they may be interested, upon such terms and conditions as they may deem wise; to pay any expenses, assessments or subscriptions in connection therewith and to accept any securities or property (whether or not the Trustees would be authorized to then invest in such securities or property) which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger, and thereafter to hold the same;

(7) To make, execute, acknowledge and deliver any and all deeds, leases, mortgages, assignments, documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(8) To enforce any right, obligation or claim in their absolute discretion and in general to protect in any way the interest of the Trust, either before or after default with respect to any such right, obligation or claim, and, in case they shall consider such action for the best interest of the Trust, in their absolute discretion to abstain from the enforcement of any right, obligation or claim and to abandon any property, whether real or personal, which at any time may be held by them;

(9) To borrow or raise money (including borrowing from the Trustee Bank to the extent permitted by the Pension Reform Act) for the purpose of the Trust in such amount and upon such terms and conditions as in their absolute discretion they may deem advisable; and for any sums so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by mortgaging or pledging all or any part of the Trust; and no person lending money to the Trustees shall be bound to see to the application of the money loaned or to inquire into the validity, expendiency or propriety of any such borrowing;

(10) To employ suitable agents and counsel from time to time, and to pay them reasonable expenses and compensation;

(11) To retain without liability for depreciation any securities or property at any time purchased and/or received by the Trustees as a part of the Trust;

(12) To purchase insurance for the Trustees (and other fiduciaries) or for the Pension Trust to cover liability or losses occurring by reason of the act or omission of a fiduciary in the case of a breach of a fiduciary obligation by such fiduciary. A Trustee (or other fiduciary) may purchase insurance to cover his liability or losses occurring by reason of his act or omission if purchased from and for his own account. The Employer may purchase insurance to cover potential liability of one or more persons who serve in a duciary capacity with regard to the Pension Trust.

The Trustees (and other fiduciaries) shall be bonded in the amount and to the extent required by the Pension Reform Act and to the extent permitted by such Act, the expense thereof shall be paid by the Pension Trust.

(13) To cause an annual audit to be made of the Pension Trust by a certified public accountant. Copies of said audit shall be furnished to the parties, and a copy shall be available at the principal office of the Pension Trust for inspectors by interested persons.

(14) To procure appropriate fidelity bonds for such agents, servants and employees of the Trustees as may receive, disburse or otherwise deal with the assets of the Pension Trust, the cost of such bonds to be borne by the Trust;

(15) To maintain any and all actions or legal proceedings which may be deemed necessary for the protection of the Pension Trust, the Plan or the Trustees, or to assure the payment of Employer contributions to the Pension Trust, or to secure the benefits contemplated hereby, in connection herewith to compromise, settle or release claims on behalf of or against the Pension Trust and/or the Trustees;

(16) To adopt rules and regulations for the administration of the Pension Trust;

(17) To delegate such of its powers and duties to individual Trustees or committees of Trustees, or to such servants, agents, or employees of the Trustees as may, in the opinion of the Trustees be available or appropriate;

(18) To construe the provisions of this Pension Trust Agreement and the Plan and any such construction adopted by the Trustees in good faith shall be binding upon any all parties or persons affected thereby.

(19) To enter into any and all contracts and agreements for carrying out the terms of the Plan and the Pension Trust and for the administration of such Plan and Trust including Reciprocal Agreements providing for pro rata pensions; and

(20) To do all acts, including those acts necessary to comply with any of the requirements of the Pension Reform Act or any other law, which they may deem necessary or proper and to exercise any and all powers of the Trustees under this instrument under such terms and conditions as they may deem to be for the best interest of the Trust.

The Bank Trustee may, in its sole discretion, cause the securities which from time to time may comprise the Trust, to be registered in its name as Trustee hereunder,

or in the name of its nominee without disclosing the ownership thereof or to take and keep the same unregistered, and to retain them, or any part thereof, in such condition that they will pass by delivery.

ARTICLE VII

The expenses incurred by the Trustees in the performance of their duties hereunder, including reasonable compensation for the Trustees in accordance with the Pension Reform Act, for agents and for service of counsel rendered to the Trustees and expenses incident thereto, and all other proper charges and disbursements of the Trustees, including all taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect to the Trust hereby created or any money, property or securities forming a part thereof, shall be paid by the Trustees out of the Trust.

ARTICLE VIII

The Bank Trustee shall not be liable for the making, retention or sale of any investment or reinvestment made by it as herein provided; for any loss to or diminution of the Trust; or as to both Trustees for anything done or omitted under this instrument, except for his own willful misconduct or lack of good faith, or any other action or omission for which personal liability is imposed under the Pension Reform Act. Any Trustee may consult with legal counsel concerning any questions which may arise with reference to his duties under this instrument, and, except as otherwise provided by the Pension Reform Act, the opinion of such counsel shall be full and complete protection in respect to any action taken or suffered by such Trustee hereunder in good faith and in accordance with the opinion of such counsel.

ARTICLE IX

The Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, shall keep accurante and detailed accounts of all investments, receipts, and disbursements and other transactions hereunder, and such accounts, books and records relating thereto shall be open to inspection and audit by the parties hereto and by the Employees and the beneficiaries of the Pension Trust at all reasonable times at the offices of the Pension Trust. The Trustees, or such other persons as may be properly designated pursuant to this Article IX shall be responsible for providing participants and beneficiaries under the Plan with all information required to be furnished pursuant to the provisions of the Pension Reform Act.

The Trustees, or such other persons as may be properly designated pursuant to this Article IX shall be responsible for maintaining records sufficient to comply with any requirements of the Pension Reform Act and for the filing of all reports with the Labor Department, Treasury Department, and Pension Benefit Guaranty Corporation which may be required by any provision of the Pension Reform Act. The Trustees shall provide to and make available to employees, participants and beneficiaries, as the case may be, all reports, applications for determination letters, descriptions and other information required to be filed or reported pursuant to the Pension Reform Act and any and all other records of the Pension Trust which pertain to said Employees, participants and beneficiaries. Further, said employees, participants and beneficiaries shall be entitled to receive any schedule, summary, report or other disclosure provided to him under the Pension Reform Act within the time periods prescribed by said Act. The Trustees are authorized to apply for permission to implement an alternative method of satisfying any of the requirements of this Article IX in accordance with the Pension Reform Act, and, upon

receiving the approval of the Labor Department for such alternative method, may utilize such method in lieu of the corresponding requirements of the Pension Reform Act and of Article IX of this instrument.

The Trustees are hereby authorized to allocate fiduciary responsibilities in any manner permitted pursuant to the Pension Reform Act.

If the Bank Trustee declines the investment responsibilities, the Employer may appoint an investment manager or managers to manage any investments held under this instrument as permitted by the Pension Reform Act.

ARTICLE X

The Employer reserves the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of this instrument, without reopening or otherwise affecting the integrity of any other provision of the Collective Bargaining Agreement, by a written agreement; provided, however, that such modification or amendment does not permit any part of the corpus or income of the Pension Trust to be used for, or diverted to, purposes other than for the sole and exclusive benefit of the employees, participants and their beneficiaries.

Upon complete or partial termination of this Pension Trust or the Plan, or both, or upon complete discontinuance of contributions under the Plan, as defined by Section 411 of the Code, the rights of all employees, participants and beneficiaries to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are fully vested and are nonforfeitable. If this Pension Trust, or the Plan, is terminated, the assets then remaining in the Pension Trust after providing for the expenses of the Pension Trust and the Plan shall be allocated, disposed of, held or distributed in the manner and priority provided in the Pension Reform Act in respect of Terminations and specifically as provided in Section 4041, 4042, 4044 and 4045 of ERISA.

ARTICLE XI

Notwithstanding anything to the contrary contained in this instrument, or any amendment thereto, it shall be unlawful for any part of the Pension Trust, other than such part as is required to pay taxes and administrative expenses, to be used for, or diverted to, purposes other than for the sole and exclusive benefit of the employees, participants and beneficiaries of the Plan.

Moneys held by the Pension Trust do not constitute a part of the deceased beneficiary's estate which can be claimed by his administrator, executor, or heirs, unless such person or persons or otherwise eligible under the terms and conditions of the Plan, nor are said moneys equivalent to the proceeds of an insurance policy in which a beneficiary may be designated; and no participant or beneficiary of the Plan may, during his lifetime, assign, devise or will moneys from this Trust, and any attempt so to do shall be void.

ARTICLE XII

This instrument shall be construed, regulated and administered under the laws of the State of ————————.

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this instrument, effective January 12, 1975, to be signed by its proper offices or representatives this ———————— day of ————————, 1975.

Attest:

————————————

(SEAL)

AMAX COAL COMPANY

By: ————————————

Its: ————————————

TRUSTEES

————————————

(Employer)

Attest:

————————————

(SEAL)

COLORADO NATIONAL BANK

By: ————————————

Trust Officer

EXHIBIT 2(b)

TEN YEAR VESTING

AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN EFFECTIVE JANUARY 12, 1975

ARTICLE I—INTRODUCTION

Pursuant to the Collective Bargaining Agreement, the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN (hereinafter referred to as the "Plan"), provides pension benefits as hereinafter set forth. The provisions of the Plan are effective January 12, 1975, (the "effective date") and are set forth below.

It is the intention of the Employer, the Trustees, and the participants that the Plan be in complete compliance with the requirements and limitations set forth in the Internal Revenue Code and the Labor Law. Accordingly, all of the terms and conditions of the Pension Reform Act, by regulation or ruling, promulgated in compliance therewith by the Secretary of Treasury or prescribed in compliance therewith by the Secretary of Labor, are hereby incorporated into and made a part of this Plan. In the event of ambiguity or doubt as to the meaning of a word, paragraph or article hereof, or other interpretation of this Plan, the meaning and interpretation provided in said Act shall be used. This Plan shall be construed, applied and administered as to be in compliance, at all times, with the terms of the Pension Reform Act.

A. *Definitions.*

(1) "Collective Bargaining Agreement" means the the Collective Bargaining Agreement between AMAX COAL COMPANY and LOCAL UNION NO. 1854 of the

United Mine Workers of America for the Belle Ayr Mine, dated ————————, 1975 and any amendments thereto or renewals thereof.

(2) "Employer" means AMAX COAL COMPANY and any successor of said corporation. A successor Employer shall be subject to the provisions of the Pension Reform Act as to said Act's requirements concerning years of service with a predecessor Employer, participation, vesting, funding and other similar provision.

(3) "Participant" means any individual employed by Employer in the appropriate bargaining unit certified in NLRB Case No. 27-RC-4914 and on whose behalf contributions have been made to this Plan by the Employer pursuant to the Collective Baragining Agreement and the Pension Trust, and any other individual entitled to receive pension benefits under the Plan.

(4) "Pension Trust" means the trust established pursuant to the Collective Bargaining Agreement to fund this Plan.

(5) 'Trustees" means the Trustees of the Pension Trust, who shall be named fiduciaries pursuant to the Pension Reform Act; provided, however, that the Pension Trust may be amended to designate other or additional named fiduciaries under said Trust and the Plan.

(6) "Credited Service" means the years of service which are accumulated and maintained for participants in accordance with Article IV and includes related Credit Service performed for Employers signatory to a plan that is recognized as a related plan by the Trustees of this and the related plan for the purposes of determining eligibility for and payment of pro rata pensions.

(7) "Releated Service" means work performed for employers who are signatory to a plan that is recognized as a "related plan" by the Trustees of this and the related plan for the purposes of determining eligibility for and the payment of pro rata pensions.

B. *When Retirement Occurs.*

For the purposes of this Plan, in the case of any participant, retirement shall be considered to occur on the last day of credited service, provided that on such day he was eligible for an immediate or deferred pension under this Plan.

ARTICLE II—ELIGIBILITY

A. *Age 55 Retirement.*

Any participant who (a) has at least ten (10) years of credited service, and (b) has attained the age of fifty-five (55) years (but not the age of sixty-two (62)) prior to retirement shall be eligible to retire on or after January 12, 1975, and shall upon his retirement (hereinafter "Age 55 Retirement") be eligible for a pension.

B. *Age 62 Retirement.*

Any participant who (a) has at least ten (10) years of credited service, and (b) has attained the age of sixty-two (62) years prior to retirement, shall be eligible to retire on or after January 12, 1975, and shall upon his retirement (hereinafter "Age 62 Retirement") be eligible for a pension. Age sixty-two (62) shall be considered the normal retirement age for purposes of the Pension Reform Act.

C. *Disability Retirement.*

A participant who (a) has at least ten (10) years of service prior to retirement, and (b) becomes totally disabled on or after the effective date as a result of a mine accident shall, upon his retirement (hereinafter "Disability Retirement"), be eligible for a pension. A participant shall be considered to be totally disabled only if by reason of such accident he is subsequently determined to be eligible for Social Security Disability Insurance Bene-

fits under Title II of the Social Security Act of its successor.

D. *Minimum Disability Retirement.*

Any participant who (a) has less than ten (10) years of signatory service prior to retirement and (b) becomes totally disabled on or after the effective date as the result of a mine accident shall, upon his retirement (hereinafter "Minimum Disability Retirement"), be eligible for a pension. A participant shall be considered to be totally disabled only if by reason of such accident he is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

E. *Deferred Vested Retirement.*

Any participant not eligible to receive a pension under any other provision of this Article II whose employment with the Employer is terminated after January 12, 1975, for any reason and who at the time of retirement has at least ten (10) years of credited service shall be eligible for a pension (hereinafter "Deferred Vested Pension"), upon attaining age sixty-two (62), or, at the election of the participant, he shall be eligible for a reduced pension beginning at any time after he attains age fifty-five (55). At the time of such termination, such participant shall be given an appropriate written notice of his eligibility and other relevant data.

F. *Nonduplication.*

A participant shall be entitled to receive a pension under only one of the foregoing paragraphs of this Article II with respect to any retirement.

G. *Employment for Vesting Purposes.*

For all purposes of this Article II, years of employment shall be computed by giving credit for one year of employment for any year for which the participant

completed 1,000 hours of employment; provided that (a) all years of employment before age twenty-two (22) shall be disregarded, (b) all years of employment before January 1, 1971, shall be disregarded unless the participant completed at least three (3) years of employment after December 31, 1970, and (c) years of employment prior to any break in service shall be disregarded to the maximum extent permissible under Section 203(b)(3) of the Employee Retirement Income Security Act of 1974. The provisions of this paragraph shall be interpreted and construed in accordance with the requirements of the Pension Reform Act and the regulations issued thereunder.

Years of service for an employer who is a party to a Reciprocal Agreement to which the Trustees of this Plan are signatory on behalf of this Plan may be counted as related credited service, see Reciprocal Agreement, if any.

ARTICLE III—AMOUNT OF PENSION

A. *Retirement in 1975-1976.*

A pension granted to a participant who retires on and after January 12, 1975, but prior to January 1, 1977 pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below.

(1) *Age 55 Retirement Pension.*

(a) a deferred pension, commencing after attainment of age sixty-two (62), computed under the provisions of Subsection A(2), below; or, at the election of the participant, (b) an immediate pension, equal to the deferred pension to which he would have been eligible under (a) above had he so elected, reduced by ¼ of one percent (.025%) for each full month (three percent (3%) per year), between the date on which pension benefits

began and the date on which participant attains age sixty-two (62).

(2) *Age 62 Retirement Pension.*

The amount of pension for Age 62 Retirement or Disability Retirement, subject to a minimum pension of $125.00 per month for Disability Retirement, shall be determined as follows:

(a) for each of the first ten (10) years of credited service, $13.00 per month;

(b) for each year of credited service in excess of ten (10) years, but not to exceed twenty (20) years, $13.50 per month;

(c) for each year of credited service in excess of twenty (20) years, but not to exceed thirty (30) years, $14.00 per month;

(d) for each year of credited service in excess of thirty (30) years, $14.50 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof.

(3) *Minimum Disability Retirement Pension.*

The amount of pension for Minimum Disability Retirement shall be $125.00 per month.

(4) *Deferred Vested Pension.*

The amount of a deferred vested pension shall be a pension, commencing on or after attainment of age sixty-two (62), computed under the provisions of Subsection A(2), above, or, at the participant's election, between ages fifty-five (55) and sixty-two (62) with the pension payable reduced to its actuarial equivalent pursuant to Appendix A.

B. *Retirement in 1977 or Thereafter.*

A pension granted to a participant who retires on or after January 1, 1977, pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below.

(1) *Age 55 Retirement Pension.*

(a) a deferred pension, commencing after attainment of age sixty-two (62), computed under the provisions of Subsection B(2), below, or, at the election of the participant, (b) an immediate pension, equal to the deferred pension to which he would have been eligible under (a) above had he so elected, reduced by ¼ of one percent (.025%) for each full month (three percent (3%) per year) between the date on which pension benefits began and the date on which the participant attains age sixty-two (62).

(2) *Age 62 Retirement and Disability Retirement Pension.*

The amount of pension for Age 62 Retirement or Disability Retirement, subject to a minimum pension of $125.00 per month for Disability Retirement, shall be determined as follows:

(a) for each of the first ten (10) years of credited service, $13.50 per month;

(b) for each year of credited service in excess of ten (10) years, but not to exceed twenty (20) years, $14.00 per month;

(c) for each year of credited service in excess of twenty (20) years, but not to exceed thirty (30) years, $14.50 per month;

(d) for each year of credited service in excess of thirty (30) years, $15.00 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof.

(3) *Minimum Disability Retirement Pension.*

The amount of pension for minimum disability retirement shall be $125.00 per month.

(4) *Deferred Vested Pension.*

The amount of a deferred vested pension shall be a pension, commencing on or after age sixty-two (62), computed under the provisions of Subsection B(2), above, or, at the participant's election, between ages fifty-five (55) and sixty-two (62) with the pension payable reduced to its actuarial equivalent pursuant to Appendix A.

C. *Increased Pension.*

Effective as of January 1, 1977, the pension of any participant who retired under this Plan on or after January 12, 1975, and whose pension was computed under the provisions of Subsection A(1) and Subsection A(2) of this Article III shall be increased by $10.00 per month. This increase will not be applicable to those participants who are eligible for either a Minimum Disability Retirement Pension or who become eligible to receive a Deferred Vested Pension.

D. *Commencement, Suspension and Termination of Pensions.*

Payments of pensions shall be subject to the following:

(1) The first payment on any pension shall be made for the month following the month in which the participant becomes eligible for a pension in accordance with Article II.

(2) The last payment to the pensioner shall be for the month in which the pensioner dies, but see the Widow's Benefit.

(3) Pension payments shall be payable on the first day of each month at the pensioner's last address of record.

(4) Any participant who continues to be employed by the Employer after his retirement shall not be entitled to receive pension benefits under this Plan until such time as he is no longer employed by the Employer.

(5) Years of service with other employers who are signatory to a Reciprocal Agreement to which this Plan is a party may be counted, under some circumstances, as credited service under this Plan; however, the amount of pension payable under this Plan shall be subject to the terms and conditions of the Reciprocal Agreement and under no circumstances shall this Plan be obligated to pay more than the pro rata pension due the participant under the Reciprocal Agreement.

ARTICLE IV—CREDITED SERVICE

A. *Credited Service.*

Subject to the limitations in paragraph B of this Article IV, credited service is a period during which the participant meets the requirements of subparagraphs (1), (2), or (3), below.

(1) A participant shall receive credit for a year of service for any year in which he worked as an employee either (a) at the Belle Ayr Mine of the AMAX COAL COMPANY for Employer, or, (b) in related service, and with credit given for the next lowest ¼ year in the event any employee works less than 1,000 hours of service as follows:

750 - 999 hours, ¾ year
500 - 749 hours, ½ year
250 - 499 hours, ¼ year
249 hours or less, 0

It is recognized that it may be difficult to establish with certainty the credited service of a participant in the employment referred to above. In making the necessary determinations as to credited service, the Trustees may, in their absolute discretion, consider and rely upon any relevant and material evidence, including without limitation any or all of the following:

(a) A statement from the Administrator of a related plan certifying to the receipt of employer reports with respect to hours worked by the participant and stating the number of hours reported for the period covered by the statement.

(b) A statement from an employer certifying that the participant performed work for such employer entitling him to credited service during such period if such employer was known or reputed to be operating in the coal mining industry and was a signatory employer to the Related Plan.

(c) A statement from the secretary or other authorized officer of a local union of the United Mine Workers of America certifying that the participant was a member in good standing in such Union during such period.

(d) A W-2 form or check stub furnished for work performed during the period for any employer known or reputed to have been operating in the coal mining industry and was a signatory employer to the Related Plan.

(e) A statement from the Social Security Administration to the effect that according to its records the participant was employed during the period by a named employer, which employer was known or reputed to be operating in the coal mining industry and was a signatory employer to the Related Plan.

(2) A participant shall receive credit for a year of service for any year in which he received state work-

men's compensation payments pursuant to an award as a result of an occupational disease or injury sustained in the mine; provided, in the case of said occupational disease or injury, the participant had been so employed by the Employer in the Belle Ayr Mine for at least three (3) consecutive calendar years prior (but not necessarily immediately prior to) the disability or injury. Credit shall be given up to a maximum of four (4) years service credit from the date of injury, or from the date of last employment in case of occupational disease provided the participant did not work regularly during the compensable period.

(3) A participant shall receive credit for a year of service for any year in which he served in the military service of the United States in any war, national emergency, or international police action, immediately following regular employment with Employer in the Belle Ayr Mine; provided, that credit for such service shall be limited to the original period of enlistment or obligated military service; and, provided, further, that the participant returned to work with Employer at the Belle Ayr Mine within twelve (12) months after his date of separation from the military service, unless he was precluded from doing so by service connected sickness, accident, or other disability, and returns to work for Employer at the Belle Ayr Mine when no longer precluded by such disability. Service credit for the period of military service shall be computed in the same manner as described in paragraph (1), above.

B. *Additional Rules Concerning Credited Service.*

(1) A participant shall not be credited with more than one year of service for any calendar year by reason of any combination of the rules of this Article IV.

(2) Except as provided in Article V, service credits shall not be accrued subsequent to the effective date of pension payments.

(3) In the case of any participant, the last day of credited service shall be the last day on which the par-

ticipant works as an employee for Employer at the Belle Ayr Mine, unless such participant continues to accrue credited service during the period for which he receives weekly sickness and accident benefits pursuant to the Collective Bargaining Agreement, in which case the last day of credited service shall be the last day of sickness and accident benefits are paid.

ARTICLE V—REEMPLOYMENT AFTER ATTAINMENT OF PENSION ELIGIBILITY

A. Any participant who has been retired and receiving a pension under this Plan and who shall be reemployed by an Employer shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, upon his subsequent retirement, be granted a pension equal to the sum of the pension he was previously receiving plus the excess of (i) over (ii) where (i) is the pension to which such participant would be entitled at the time of such retirement, based upon all years of credited service under the Plan and (ii) is the pension to which such participant would be entitled at the time of such retirement, based solely on his credited service at the time of his previous retirement.

B. Any participant eligible for a deferred vested pension under this Plan who shall be reemployed by the Employer prior to the commencement of pension benefits shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, be granted his credited service applicable to the deferred vested pension plans plus his credited service accrued after such reemployment.

ARTICLE VI—SURVIVING SPOUSE BENEFIT

A. (1) Except as provided in paragraph B., and subject to the requirements of the Pension Reform Act, there is hereby provided a Surviving Spouse Benefit for any

participant who (a) has retired and is receiving a pension under this Plan, except a participant receiving a deferred vested pension who has not completed at least ten (10) years of credited service, (b) has not retired, but, at the date of his death, otherwise has met the eligibility requirements for an immediate pension under Article IIA., B., C., or D. under this Plan, and (c) is over age fifty-five (55) with at least ten (10) years of credited service and who has retired and is entitled to elect an immediate pension under Article IIA. or IIE. at the date of his death.

(2) The amount of such benefit shall be equal to fifty percent (50%) of the amount of the participant's pension at the time of his death or, in the event the participant dies after age fifty-five (55) at a time when he was eligible to elect a pension or to retire and receive a pension under Article II, but prior to his receipt of a pension, fifty percent (50%) of the amount of the pension he would have received if he had elected a pension or retired and become entitled to a pension as of the date immediately preceding the date of his death.

(3) The Surviving Spouse Benefit will not be effective unless the participant and his spouse have been married throughout the nine (9) month period ending on the date of the participant's death or unless such nine (9) month requirement would be waived for purposes of determining entitlement to widow's insurance benefits under the Social Security Act.

(4) Payment to an eligible spouse will commence as of the first of the month following the month in which the participant's death occurs and the final payment shall be made for the month in which the spouse's death occurs.

B. (1) Any participant who is not employed by the Employer at the Belle Ayr Mine on the effective date is not covered for a Surviving Spouse Benefit under this Article unless (a) he obtains at least three (3) years of credited service after the effective date, (b) he had ceased to be employed by the Employer as a result of

(i) layoff, (ii) nonoccupational disability or accident, or (iii) occupational injury for which he was receiving workmen's compensation, or (c) he dies at a time when he is employed by the Employer at the Belle Ayr Mine.

ARTICLE VII—JOINT AND SURVIVOR ANNUITIES

Notwithstanding any other provision of this Plan, if a participant qualifies for a pension under this Plan, but is not covered for a surviving spouse benefit, the pension benefit otherwise provided to such participant shall be reduced actuarially pursuant to Appendix B and fifty percent (50%) of such reduced pension benefit will be continued, after the death of the participant, for the life of any qualified surviving spouse; provided, however, that such participant shall have a reasonable period before the starting date of his pension benefit to elect not to take a joint and survivor annuity as provided for in this Article and instead to receive a pension benefit for his life only which shall be computed pursuant to Appendix A and shall be the actuarial equivalent of the joint and survivor annuity computed under Appendix B. Prior to the exercise of an election under this paragraph, the participant must be provided with a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election not to receive such annuity. In the event a participant elects not to receive a joint and survivor annuity, such election shall not become effective if the participant dies within a period of two (2) years beginning on the date of such election. A qualified surviving spouse shall be any spouse who has been married to the participant for at least nine (9) months prior to his death, unless such nine (9) month requirement would be waived for purposes of determining entitlement to widow's insurance benefits under the Social Security Act.

In the event that a participant who was subject to this Article and who was entitled to elect to receive a pension benefit shall die prior to receipt of a pension, his qualified surviving spouse shall be entitled to receive

a survivor's benefit in the form of an annuity for life in an amount equal to fifty percent (50%) of the pension benefit the decedent would have received if he had elected to receive a pension beginning on the date immediately preceding the date of death.

Payment to a qualified surviving spouse under this Article will commence as of the first of the month following the month in which the participant's death occurs and the final payment shall be made for the month in which the spouse's death occurs.

ARTICLE VIII—MISCELLANEOUS

A. *Determination of Eligibility.*

The Trustees or such other named fiduciaries as may be properly designated shall have full and final determination as to all issues concerning eligibility for benefits.

B. *General.*

(1) The Trustees are authorized to promulgate rules and regulations to implement this Plan, and those rules and regulations shall be binding upon all persons dealing with and participants claiming benefits under this Plan.

(2) No benefit payable under this Plan shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution, or encumbrance of any kind, and any attempt to accomplish the same shall be void.

(3) This Plan may be amended pursuant to the provisions of the Collective Bargaining Agreement or may be terminated during the life of the Collective Bargaining Agreement by agreement of the parties thereto; provided, however, that:

(a) this Plan shall not be amended or terminated in such manner as would cause or permit any part of the assets in the Pension Trust to be diverted

to purposes other than the exclusive benefit of the participants and their beneficiaries, and

(b) this Plan shall not be amended to deny to a participant retroactively any benefits to which he was entitled under this Plan, unless such amendment is necessary to conform this Plan to, or to satisfy the conditions of any law, governmental regulations or ruling.

(4) Upon the termination of this Plan of the complete discontinuance of contributions to the Pension Trust, this Plan shall remain in force and effect for the period necessary to complete the payment of benefits in accordance with the terms of this Plan to the extent assets in the Pension Trust are available to pay such benefits.

(5) Forfeitures arising from the operation of the Plan shall not be used to increase the benefits which otherwise would be received under this Plan.

(6) Any participant or beneficiary whose claim for benefits under this Plan has been denied shall be (a) provided with adequate notice in writing setting forth the specific reasons for such denial, which notice shall be written in a manner calculated to be understood by the participant, and, (b) afforded a reasonable opportunity for a full and fair review of the decision denying the claim by an appropriate named fiduciary or a person properly designated to carry out such responsibility.

(7) The Trustees are hereby authorized to allocate fiduciary responsibilities in any manner permitted pursuant to Section 405(c) of the Employee Retirement Income Security Act of 1974.

(8) Contributions to the Pension Trust to fund the benefits under this Plan shall be paid solely by the Employer in accordance with the greater of:

(a) a contribution rate by Employer of an amount, based on actuarial calculations, sufficient to provide for current service benefits and to amortize any un-

funded past service liabilities over a period not to exceed thirty (30) years, or

(b) a contribution rate required under Section 412 of the Code to satisfy the minimum funding requirements.

And, provided, however, that Employer contributions hereunder shall in no event exceed the limitations on benefits and contributions set forth in Section 415 of the Code for pension plans.

All actuarial calculations shall be made by an enrolled actuary as provided in the Employee Retirement Income Security Act of 1974 and all calculations shall be in conformity with said Act.

Contributions by the Employer in compliance with this paragraph (8) shall be in complete and full discharge of Employer's obligations under this Plan and the Pension Trust and the Employer shall not be liable to any employee, participant, beneficiary of a participant or bargaining representative of any such employee or participant for contributions or additional contributions.

ARTICLE IX—PAYMENTS OF BENEFITS UPON EARLY TERMINATION OF PLAN.

Notwithstanding any provisions in this Plan to the contrary during the period described below, the benefits provided by the Employer's contributions for "restricted participants" who are those participants whose annual benefit provided by such contributions will exceed ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500), but applicable only to the twenty-five (25) highest paid employees as of the time of establishment of the Plan (including any such high paid employees who are not participants at that time, but may later become participants) shall be subject to the conditions set forth below. These conditions shall continue for a period of ten (10) years following the date of establishment of the

Plan, and if at the end of ten (10) years the full current costs under the Plan have not been funded, these conditions shall continue until the full current costs are funded for the first time.

(1) Certain benefits (hereinafter called "unrestricted benefits") shall be paid to a restricted participant in full which have been provided by the Employer's contributions not exceeding the larger of the following amounts:

(a) TWENTY THOUSAND DOLLARS ($20,000); or

(b) An amount equal to twenty percent (20%) of the first FIFTY THOUSAND DOLLARS ($50,000) of the participant's average regular annual compensation multiplied by the number of years between the date of establishment of the Plan and whichever of the following dates shall be applicable:

(i) the date of termination of the Plan if the Plan is terminated within ten (10) years from the date of its establishment, or the date of the failure to meet full current costs if earlier;

(ii) in the case of a restricted participant described in this Article for whom such benefits become payable within ten (10) years after the date of establishment of the Plan, the date benefits become payable under the Plan, or the date of the failure to meet full current costs if earlier; or

(iii) in the case of a restricted participant described in this Article for whom benefits become payable under the Plan after the Plan has been in effect ten (10) years if the current costs of the Plan for the first ten (10) years have not been funded, the date of the failure to meet full current costs.

(2) If the Plan is terminated or the full current costs thereof have not been met at any time within ten (10) years after the establishment of the Plan, the benefits which any of the restricted participants described in this Article may receive from the Employer's contributions shall not exceed the benefit set forth in (1), above, and if at the end of ten (10) years from the date of establishment of the Plan the full current costs have not been met, the benefits which any of such participants may receive from the Employer's contributions shall not exceed the benefit set forth in (1), above, until the full current costs are funded for the first time.

(3) If a restricted participant described in this Article leaves the employ of the Employer or withdraws from participation hereunder when the full current costs have been met, the benefits which he may receive from the Employer's contributions shall not exceed the benefits set forth in (1), above, until the Plan has been in force for ten (10) years from the date of its establishment and the full current costs have been funded.

(4) These conditions shall not restrict the full payment of any insurance, death, or survivor's benefits on behalf of a participant who dies while the Plan is in full effect and its full current costs have been met.

(5) These conditions shall not restrict the current payment of full retirement benefits for any retired restricted participant described in this Article in the form of level amounts of annuity not greater than the level annuity under the basic form of benefit provided in the Plan, while the Plan is in full effect and its current costs have been met.

(6) In the event of termination of this Plan within the period described in the second sentence of this Article, any excess benefits purchased by the Employer's contributions for restricted participants described in this Article shall be reduced to cash and distributed to unretired participants other than those restricted by this

Article in the same proportion as the total contributions theretofore made for their benefits hereunder.

In the event that the Employer's Plan shall be changed so as to increase substantially the extent of possible discrimination as to contributions and as to benefits actually payable in the event of the subsequent termination of the Plan or the subsequent discontinuance of contributions thereunder, then the provisions of this Article IX shall be applied to the Plan as so changed as if it were a new Plan established on the date of such change. However, the provision in Section (1) permitting payment in full of benefits based on at least TWENTY THOUSAND DOLLARS ($20,000) shall be applicable to the aggregate amount contributed by the Employer on behalf of the participant from the date of establishment of the original Plan, and, for purposes of determining if the participant's anticipated annual pension exceeds ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500), both the Employer contributions on the participant's behalf prior to the date of the change in the Plan and those expected to be made on his behalf subsequent to the date of change (based on his rate of compensation on the date of the change) are to be taken into account.

In the case of any increase in benefits under the Plan, those unrestricted benefits to be paid to a restricted participant in full shall thereafter be determined in the following manner.

Such benefits shall be paid in full which have been provided by the Employer's contributions not exceeding the larger of the following amounts:

(a) the Employer's contributions (or funds attributable thereto) which would have been applied to provide the benefits for the participant if the Plan had been continued without change as it existed prior to the effective date of the change; or

(b) TWENTY THOUSAND DOLLARS ($20,000); or

(c) the sum of:

(i) Employer funds (or funds attributable thereto) which would have been applied to provide benefits for the participant if the Plan had not been changed, but had been terminated the day before the eflective date of the change; and
(ii) An amount equal to twenty percent (20%) of the first FIFTY THOUSAND DOLLARS ($50,000) of the participant's average regular annual compensation multiplied by the number of years between the effective date of the change and whichever of the following dates shall be applicable:

1. the date of termination of the Plan if the Plan is terminated within ten (10) years from the date of the change, or the date of the failure to meet full current costs if earlier;

2. in the case of a restricted participant described in this Article for whom such benefits become payable with ten (10) years after the effective date of the change, the date benefits become payable under the Plan as changed, or the date of failure to meet full current costs if earlier; or

3. in the case of a restricted participant described in this Article for whom benefits become payable under the Plan as changed after the Plan as changed has been in effect for ten (10) years if the current costs of the Plan as changed for the first ten (10) years from the effective date of the change have not been funded, the date of the failure to meet full current costs.

ARTICLE X—SIGNATURES

This instrument shall be construed, regulated and administered under the laws of the State of ————————.

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this instrument, effective January 12, 1975, to be signed by its proper officers or representative this ——— day of ————————, 1975.

Attest:

————————————

(SEAL)

EMPLOYER
AMAX COAL COMPANY

By: ————————————

Its: ————————————

TRUSTEES

———————— BANK

By: ————————————
Trust Officer

————————————

APPENDIX A

Actuarial Equivalence Factors for Deferred Vested Retirement Benefits Commencing Prior to Age 62

The following factors are to be multiplied by the full accrued benefit payable commencing at normal retirement age 62 to yield the equivalent benefit payable commencing at the indicated age:

AGE		Actuarial Equivalence	AGE		Actuarial Equivalence
Yrs.	Mos.	Factor	Yrs.	Mos.	Factor

EXHIBIT 2(c)

RECIPROCAL AGREEMENT

This RECIPROCAL AGREEMENT by and between the AMAX COAL COMPANY BELLE AYR MINE PENSION TRUST and the UNITED MINE WORKERS OF AMERICA PENSION AND BENEFIT TRUSTS is made and entered into by and among the representatives of the signatory Pension Funds which provide retirement and pension benefits for employees represented for the purpose of collective bargaining by one or more local unions affiliated with the United Mine Workers of America.

WITNESSETH:

WHEREAS, the representatives of each signatory Pension Fund acting under separate Trust Agreements are authorized and empowered to grant and administer retirement and pension benefits, under their respective retirement and pension plans, to employees who are or have been represented in collctive bargaining by local unions affiliated with the United Mine Workers of America; and

WHEREAS, many employees have been, are or may be, from time to time, employed by employers under contract to contribute to one of the signatory Pension Funds and at another time employed by an employer under contract to contribute to another of the Funds, and, as a consequence, an employee may be subject to the provisions of different pension plans; and

WHEREAS, many employees whose employment has been, is or may be, divided among employers obligated to contribute to more than one of the signatory Pension Funds may not be eligible for any pension benefits from any signatory Pension Fund or may not qualify for a full pension benefit because their years of covered em-

ployment have been or will be divided among various employers and local union jurisdictions; and

WHEREAS, each signatory Pension Fund desires to provide Pro Rata Pensions for employees who would be ineligible for any pension benefits from any signatory Pension Fund, or would not qualify for full pension benefits under any one of the signatory Pension Funds, because their years of covered employment have been divided between employers making contributions to two or more such Pension Funds; and

WHEREAS, each of the signatory Pension Funds have each adopted provisions (by way of amendment or otherwise) in their Pension Plans governing eligibility for any payment of Pro Rata Pensions, in the form annexed hereto as Exhibit A; and

WHEREAS, each of the signatory Pension Funds desires to provide for the implementation of the amendments providing for Pro Rata Pensions and the establishment of uniform procedures to carry out the terms of this Reciprocal Agreement; and

WHEREAS, the representatives of each signatory Pension Fund executing this Reciprocal Agreement on behalf of their respective Pension Fund represent and warrant that they have been duly authorized to make, execute and deliver this Reciprocal Agreement,

NOW, THEREFORE, in consideration of the premises, it is mutually understood and agreed as follows:

Section 1. Recognition. Each signatory Pension Fund, for the period it is bound by this Reciprocal Agreement, recognizes each other signatory Pension Fund as a "Related Plan" for the purposes of the terms of Exhibit A, and for the further purposes set forth in this Reciprocal Agreement.

Section 2. Cooperation. The effective administration of Pro Rata Pensions benefits by the signatory Pension

Funds, requires that each Fund exchange information with respect to the credited service of persons covered by such Fund, the status of Pro Rata Pensions paid from time to time by such Fund and the details of the plans of benefits provided by such Fund. The representatives of each signatory Pension Fund agree to cooperate in the exchange of relevant information and documents to permit implementation of the Pro Rata Pensions provisions in the attached Exhibit A and the disclosure and information requirements provided by the Employee Retirement Income Security Act of 1974. Each signatory Pension Fund shall comply promptly with any reasonable written request by another signatory Pension Fund for information or data necessary to carry out the purposes of this Reciprocal Agreement.

Section 3. No Change in Exhibit A. Each signatory Pension Fund agrees that no change shall be made in the provisions of the Article attached as Exhibit A, either by change of language or by any modification of the Pension Plan which would have the effect of changing the provisions of Exhibit A. It is further agreed that the only way a signatory Pension Fund can terminate the operation of the provisions of Exhibit A is to follow the "termination" provisions of this Reciprocal Argeement set forth in Section 6 hereof.

Section 4. Effective Date. The date this Reciprocal Agreement becomes operative shall be the date shown as the "Effective Date" on the signature page executed by each party to this Reciprocal Agreement.

Section 5. Duration of Reciprocal Agreement. This Reciprocal Agreement shall continue to be operative so long as two or more Pension Funds continue as signatories.

Section 6. Termination. Any signatory Pension Fund may terminate such Fund's participation in this Reciprocal Agreement upon ninety (90) days' written notice in advance of the date of such termination provided that such written notice complies with the following:

(a) It states the effective date of termination of participation in the Reciprocal Agreement, and such date shall not be less than ninety (90) days from the date of mailing of such written notice.

(b) A copy is sent by certified mail addressed to each of the other signatory Pension Funds.

(c) It reflects that the withdrawal of the Pension Fund has been duly approved by the withdrawing Pension Fund.

It is agreed that once a signatory Pension Fund has terminated its participation in this Reciprocal Agreement, is may not thereafter become a party to this Agreement unless written consent is received from all Pension Funds participating as signatory Pension Funds at the time such Pension Fund may wish to reparticipate.

Section 7. Arbitration. Any dispute, controversy or claim arising out of or relating to the application of this Reciprocal Agreement, or branch thereof, shall be settled by arbitration. Either signatory Pension Fund which is a party to a dispute, controversy or claim involving another signatory Pension Fund under this Agreement which the representatives of the Funds involved cannot resolve within ninety (90) days after the matter has been presented in writing by the aggrieved or moving signatory Pension Fund to the other signatory Pension Fund may request arbitration of the issue by filing a written notice of its desire for arbitration, in which notice it shall set forth the nature of such dispute, controversy or claim by certified mail. If the representatives of the signatory Pension Funds involved in the dispute cannot agree upon an arbitrator within thirty (30) calendar days, then the representatives of any of the signatory Pension Funds mav apply to the senior judge of the United States District Court for the district in which the Fund has its situs, for the appointment of an arbitrator to hear the unresolved dispute, and such arbitration shall be conducted in accordance with such pro-

cedure as the arbitrator shall determine. The award of the arbitrator shall be final, binding and conclusive upon the parties to the dispute and may be enforced in any court of competent jurisdiction.

Section 8. Separate Liability.

(a) It is expressly understood and agreed that none of the signatory Pension Funds assumes any of the liabilities or obligations of any of the other signatory Pension Funds or parties to this Reciprocal Agreement. Each signatory Pension Fund shall be liable solely and exclusively for pension benefits due under its own pension plan, and no signatory Pension Fund shall be liable for the acts or omissions of any other Pension Fund.

(b) Each signatory Pension Fund and its representatives shall be fully protected in acting upon any instrument, certificate, report or paper believed by its representatives to be genuine, and the representatives of each signatory Pension Fund shall be under no duty to make any investigation or inquiry as to any statement in any such writing, or as to the authority of the person making such statement, but may accept the same as conclusive evidence of the accuracy of the statement contained therein and the authority to make it.

Section 9. Miscellaneous.

(a) Except as herein expressly provided, this Reciprocal Agreement may not be modified, varied or altered, except in writing executed by all of the then participating signatory Pension Funds.

(b) This Reciprocal Agreement shall be construed and enforced according to the laws of the State of Wyoming, and the Trustees of the signatory Pension Funds shall be liable to account with respect to this Reciprocal Agreement, and any rights and duties thereunder, only in the courts of the State of Wyoming.

IN WITNESS WHEREOF, the undersigned Pension Fund by the signature of its duly authorized representatives hereby becomes a party to the attached Reciprocal Agreement and agrees to be bound by its terms and provisions.

The effective date for the following Pension Fund shall be _____, 1975.

AMAX COAL COMPANY
BELLE AYR MINE PENSION TRUST
COLORADO NATIONAL BANK

By: _____

Its: _____

_____

EXHIBIT A

ARTICLE IIA

PRO RATA PENSIONS

Section 1. Purpose. Pro Rata Pensions are provided Employees who would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this Plan and employment creditable under another pension plan or whose pensions would otherwise be in less than the full amount because of such division of employment.

Section 2. Related Plans. By resolution duly adopted, the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN may recognize another pension plan as a Related Plan.

Section 3. Related Credited Service. The term "Related Credited Service" means years of service, or portions thereof, creditable to an Employee under a Related Plan.

Section 4. Combined Credited Service. The term "Combined Credited Service" means the total of an Employee's Related Credited Service plus the credited service accumulated under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN.

Section 5. Non-Duplication of Credits. An Employee shall not receive double credit for the same period of employment. No more than one year of Credited Service or Related Credited Service shall be given for all employment in any given year.

Section 6. Eligibility for a Pro Rata Pension.

(a) An Employee who is retired in accordance with Article II of the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN shall be eligible for a Pro Rata Pension if he meets the following requirements:

(1) He (or his spouse in respect of a Surviving Spouse Benefit) would be eligible for an Age 55 Retirement, Age 62 Retirement, Disability Retirement, Minimum Disability Retirement, or Deferred Vested Retirement pension under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN credit; and

(2) He has earned at least one full year of AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN credited service; and

(3) He has earned (i) AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN credited service; (ii) Related Credited Service, or (iii) Combined Credited Service for which contributions were made or required to be made by a collective bargaining agreement to the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN or to a Related Plan.

Section 7. Amount of the Pro Rata Pension. In general, the amount of the Pro Rata Pension payable by the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN will be determined by multiplying the number of years of credited service by the appropriate pension factor (monthly dollar amount, adjusted by the actuarial factors provided in Appendix A and Appendix B to the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN) reduced or adjusted for the type of pension involved, as, for example, in the case of an Age 55 Retirement Pension if an immediate, but reduced, benefit is elected.

If the number of years of credited service, Related Credited Service or Combined Credited Service are sufficient as to require a determination of the Pro Rata Pension based on different monthly amounts, as, for example, the Pro Rata Pension would be based on credited service computed, in part, at $13.50 per month, and, in part, at $14.00 per month, the following rules shall apply.

(a) The chronology of credited service with each Plan Plan shall be established and the Pro Rata Pension shall be determined accordingly.

EXAMPLE: Assume for convenience, that all credited service takes place after January 1, 1977. Employee is employed by an employer signatory to a Related Plan for the period January 1, 1977, through January 1, 1987. He is then employed by the AMAX COAL COMPANY for the period January 2, 1987, through January 1, 1997. Employee retires with 20 years of Combined Credited Service, and is entitled to an Age 62 Retirement Pension. The Pro Rata Pension would be computed as follows: The AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN would pay a monthly pension of $140.00, i.e., 10 years of credited service under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN x $14.00 per month, which is the monthly dollar amount for credited service in excess of 10 years, but not in excess of 20 years. The Related Plan would be obligated to pay Employee a Pro Rata Pension based upon 10 years of service, but computed using a monthly amount determined for the first 10 years of credited service in the Related Plan or such pension benefit as is, in fact, provided by the Related Plan for said 10 years of credited service.

EXAMPLE: Assume the same facts as in the previous example, except that the Employee is employed by the AMAX COAL COMPANY for the period January 1, 1977, through January 1, 1987. He is then employed by an employer signatory to a Related Plan for the period January 2, 1987, through January 1, 1997. The Pro Rata Pension would be computed as follows: The AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN would pay a monthly pension of $135.00, i.e., 10

years of credited service under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN x $13.50 per month, which is the monthly dollar amount of credited service for the first 10 years of credited service in that Plan. The Related Plan would be obligated to pay Employee a Pro Rata Pension based upon 10 years of service, but computed using a monthly amount for credited service in excess of 10 years, but not in excess of 20 years, or such pension benefit as is, in fact, provided by the Related Plan for said 10 years of credited service.

EXAMPLE: Assume the same facts as in the previous examples, except that the Employee is employed by the AMAX COAL COMPANY for the period January 1, 1977, through January 1, 1972; by an employer signatory to a Related Plan for the period January 2, 1982, through January 1, 1987; by AMAX COAL COMPANY January 2, 1987, through January 1, 1992, and by the other employer January 2, 1992, through January 1, 1997. The Pro Rata Pension would be computed as follows: Employee has 10 years of credited service with the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN and 10 years of credited service with the Related Plan. His pension from the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN would be $137.50 per month determined in two steps: 5 years credited service during the Employee's first 10 years of credited service entitling him to a monthly dollar factor of $13.50 per month, or 5 x $13.50 = $67.50 per month. Employee also has 5 years of credited service during the Employee's second 10 years of credited service entitling him to a monthly dollar factor of $14.00 per month, or 5 x $14.00 = $70.00 per month. The total of the two increments is $137.50 per month. The pension payable by the Related Plan would be similarly computed or the Employee would be en-

titled to such pension benefit as is, in fact, provided by the Related Plan for said 10 years of credited service.

EXAMPLE: Assume the same facts as in the previous examples, except that the Employee is employed by the AMAX COAL COMPANY for the period January 1, 1977, through January 1, 1982, and by an employer signatory to a Related Plan for the period January 2, 1982, through January 1, 1987. Employee retires with 10 years of Combined Credited Service, and is entitled to an Age 62 Retirement Pension. The Pro Rata Pension would be computed as follows: The AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN would pay a monthly pension of $67.50, i.e., 5 years of credited service under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN x $13.50 per month, which is the monthly dollar amount for the credited service for the first 10 years of credited service under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN. The Related Plan would be obligated to pay Employee a Pro Rata Pension based upon 5 years of service, but computed using a monthly dollar amount determined for the first 10 years of credited service in the Related Plan or such pension benefit as is in fact provided by the Related Plan for said 5 years of credited service.

(b) It is recognized that it may be difficult to establish with certainty the Combined Credited Service and chronology of employment referred to in (a), above. In making the necessary determinations as to Combined Credited Service, the Trustees may, in their absolute discretion, consider and rely upon any relevant and material evidence, including without limitation any or all of the following:

(1) A statement from the Administrator of the Related Plan certifying to the receipt of employer reports with respect to hours worked by the Employee and stating the number of hours reported for the period covered by the statement.

(2) A statement from an employer certifying that the Employee performed work for such employer entitling him to Credited Service during such period if such employer was known or reputed to be operating in the mining industry and which or who was signatory to a Related Plan.

(3) A statement from the secretary or other authorized officer of the Union certifying that the Employee was a member in good standing in such Union during such period, or was employed by such Union during such period in a position included under the Plan pursuant to regulations adopted by the Trustees of said Plan.

(4) A W-2 form or check stub furnished for work performed during the period for any employer known or reputed to have been operating in the mining industry and which or who was signatory to a Related Plan.

(5) A statement from the Social Security Administration to the effect that according to its records the Employee was employed during the period by a named employer, which employer was known or reputed to be operating in the mining industry and which or who was signatory to a Related Plan.

Section 8. Payment. Payment of the Pro Rata Pension shall be subject to all the conditions applicable to the other pensions under the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN.

Under no circumstances shall the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN be obligated to pay a Pro Rata Pension in an amount in excess of a pension benefit determined by actual credited service with the AMAX COAL COMANY BELLE AYR

MINE PENSION PLAN determined in the manner provided in Section 8, above. Neither AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN nor any Related Plan shall be liable for the pension obligations of the other or any other Plan. The Pro Rata Pension obligation of the AMAX COAL COMPANY BELLE AYR MINE PENSION PLAN, determined as provided in this Agreement, shall be the sole obligation of this Plan and this Plan shall not be required to transfer funds or other assets to a Related Plan to satisfy any Pro Rata Pension obligation.

JOINT EXHIBIT 2(d)

AMAX COAL COMPANY
A DIVISION OF AMERICAN METAL CLIMAX, INC.
105 South Meridian Street
Indianapolis, Indiana 46225
(317) 539-6251

August 18, 1975

Mr. Joseph A. Yablonski
General Counsel
United Mine Workers of America
United Mine Workers Building
900 - 15th Street, N.W.
Washington, D.C. 20005

Dear Mr. Yablonski:

Enclosed you will find copies of the Amax Coal Company Belle Ayr Pension Plan, the Amax Coal Company Belle Ayr Mine Pension Trust Agreement, and a Reciprocal Agreement relative to the Pension Program. These documents are for your review, as discussed in our recent meeting in Louisville.

Please advise me if you have questions concerning these proposals.

Sincerely,

/s/ H. E. Payne, Jr.
H. E. PAYNE, JR.
Vice President—
Administration and
Employee Relations

HEP:wr

Enclosures

JOINT EXHIBIT 7(k)

AMAX COAL COMPANY
A DIVISION OF AMERICAN METAL CLIMAX, INC.
105 South Meridian Street
Indianapolis, Indiana 46225
(317) 539-6251

March 17, 1975

To The Employees of The Belle Ayr Mine:

Our final offer to the Union has been rejected. Our negotiations are at an impasse. We have informed the Union that we have decided to put our final offer into effect as of March 14, 1975.

This means that employees working on and after that date will be paid in accordance with our final proposal. Our proposal on wages and benefits is equal or better in some instances than the agreement signed by Peabody and a group of three other companies. We have been asked what it is and a comparison of the industry agreement and our proposal follows.

1. *Health & Welfare*—Better benefits than Peabody group. (See attached comparison.)
2. *Sickness & Accident Benefits*—Better than the Peabody group.
3. *Pension*—Better than Peabody group. (See attached comparison.)
4. *Protective Clothing Allowance*—Better benefits than Peabody group.
5. *Retroactive Allowance*—Better than Peabody group agreement.
6. *Wages*—Same as Peabody group agreement. (See attached sheets.)
7. *Holidays & Vacations*—In effect, same as Peabody group agreement.

8. *Job Bidding Procedures at Belle Ayr*—In effect, same as Peabody group agreement, except no agreement on panels at other mines.

9. *Discharge and Grievance Procedure*—In effect, same as Peabody group agreement.

We and other companies have been unable to conclude an agreement with the union. We have continued to negotiate for an agreement designed to meet the needs of our company and our employees and do not intend to be forced into signing anything less than that. The law says it is not legal to compel us to sign somebody else's agreement.

Since we have decided to exercise our right to continue our business, we recognize that there will be some who do not agree with what we are doing and may try to stop us. Such efforts are unlawful in view of what has happened and what the union has done. We intend to respect the rights of our employees and the union and we expect the same recognition of the rights of our company. Such mutual respect for each other's rights will prevent problems.

Quite often unions try to fine employees who exercise their lawful right to work during a strike. We don't believe any union has a right to coerce employees by threatening to fine or fining them to try to force them to engage in unlawful strikes or activities. If they do, we belive that action is in itself unlawful and can be stopped.

At any rate, since some of you have asked about union fines, remember no union can fine anyone who has withdrawn his membership in the union *before* he goes to work. We are not trying to get you to withdraw from the union, only you can make that decision. All we are telling you are *Your Rights*, namely, that the union cannot fine you if you aren't a member, and you may avoid any possibility of a fine if you aren't a member.

Wyoming is a right to work state. This means the union must represent you all fairly and equally whether you are a member or not. The benefits of any union contract must be made available to you, if one is ever entered into, whether you are a member or not. If you decide to withdraw from the union, you can do so simply by sending a letter to the local union telling them you wish to resign. We will treat all our employees the same whether they are members or not.

While we don't feel responsible for this strike, we do feel a sense of responsibility to each individual and their families, who have worked for us and toward the Community of Gillette. We hope the union and each of you has the same respect and feeling of responsibility and respect for others' rights and will no nothing to infringe their rights, personal health and safety.

We hope that all of you return to work as soon as possible. We do *not* want to *replace* anyone, although we have that right. We have taken precautions to provide for the personal safety and security of all employees and their families who decide to stop their unlawful strike and exercise their right to work.

If anyone attempts to threaten or coerce you, please let us know promptly. Appropriate corrective action can be taken if the facts are known by us.

/s/ H. E. Payne, Jr.
H. E. PAYNE, JR.
Vice President—Administration & Employee-Relations
AMAX Coal Company

HEP/lc

	AMAX Proposal	UMWA Proposal
1. All medical services and physicians services	All reasonable and customary charges are covered in full	Same
2. Prescription Drugs	Effective one year from effective date of Agreement all drugs will be paid with a $1.00 deductible per prescription	Payable only if drugs are needed for serious illness
3. Vision Care	1 examination per year ($15.00) 1 set of lenses per year ($8.00-$10.00-$12.00) 1 set of frames per 2 yrs. ($ 7.00)	No coverage provided
4. Major Medical	$250,000 lifetime with 100% co-insurance over $5,000.00 in calendar year, annual reinstatement of $1000 in each January 1.	$50,000 per lifetime with annual reinstatement up to $5,000.00 per year
	Includes convalescent and nursing home	$100.00 deductible with $300.00 limit per family
	$100.00 deductible with $300.00 limit per family	

	AMAX Proposal	UMWA Proposal
5. Sickness Insurance	$100.00 per week 0 to 6 mos. service; no benefits 6 mos. to 5 yrs.—13 weeks 5 yrs. to 10 yrs.—26 weeks 10 yrs. or more —52 weeks	$100.00 per week 0 to 6 mos. service; no benefits 6 mos. to 1 yr. — 6 w 1 yr. to 5 yrs.—13 w 5 yrs. to 10 yrs.—26 w 10 yrs. to 15 yrs.—39 w 15 yrs. or more —52 w
6. Accident Insurance	24 hour coverage $100.00 per week—Eligible from first day of accident or hospital—52 week coverage 1st day of employment	Same
7. Supplemental Accident	$300.00 per occurrence	None

COMPARISON OF PENSION BENEFITS

	AMAX PROPOSAL	UMWA Proposal
Eligibility for Retirement	Age 55 plus 10 years of service in coal mining industry	Same
Maximum benefits payable at age:	62	Same
Amount of Maximum Benefits payable for miners who ret. in:		
1975	$13.00 per month multiplied by years of service for first 10 years of service; $13.50 per month multiplied by years of service for the second 10 years of service; $14.00 per month multiplied by years of service for the third 10 years of service; $14.50 per month multiplied by years of service for each year over 30 years of service plus $10.00 per month after January 1, 1977.	$200 per month in 1975 $225 per month in 1976 $250 per month in 1977

	AMAX Proposal	UMWA Proposal
1976	$13.00 per month multiplied by years of service for first 10 years of service; $13.50 per month multiplied by years of service; $14.00 per month multiplied by years of service for the third 10 years of service; $14.50 per month multiplied by years of service for each year over 30 years of service plus; $10.00 per month after January 1, 1977.	$12.00 per month multiplied by years of service for first 10 years of service; $12.50 per month multiplied by years of service for the second 10 years of service; $13.00 per month multiplied by years of service for the third 10 years of service; $13.50 per month multiplied by years of service for each year over 30 years of service.
1977	$13.50 per month multiplied by years of service for first 10 years of service; $14.00 per month multiplied by years of service for the second 10 years of service; $14.50 per month multiplied by years of service for the third 10 years of service; $15.00 per month multiplied by years of service for each year over 30 years of service.	$12.50 per month multiplied by years of service for first 10 years of service; $13.00 per month multiplied by years of service for the second 10 years of service; $13.50 per month multiplied by years of service for the third ten years of service; $14.00 per month multiplied by years of service for each year over 30 years of service

estimate your pension under terms of both proposals, see the attached tables (Pages 138-141)

1977 (cont.)	AMAX PROPOSAL	UMWA Proposal
4. Pensions for Disabled Miners		
Less than 10 years of service	$125 per month	Same
More than 10 years of service	Minimum of $125 per month which is increased to pension levels at age 62 in the attached tables effective immediately	Minimum of $125 per month which will be increased to pension levels at age 62 in the attached tables effective on or after January 1, 1976.
5. Pensions for Widows of Pensioned Miners	50% of spouse's pension	Same
Death of Working Miner After Eligibility for Immediate Pension has been attained	50% of pension miner would have received had he retired on date of death	Same
6. Deferred Vested Pension		
Eligibility	10 years of service in coal mining industry	Same
Payable	At age 62 or an actuarially reduced pension at age 55	Same

COMPARISON OF LIFE INSURANCE BENEFITS

	AMAX Proposal	UMWA Proposal
1. Working miner with 1 to 5 dependents	$8500	$7500
2. Working miner with more than 5 dependents	$9000 plus additional $500 per dependent with maximum of $11,000	$7500 plus additional $500 per dependent with maximum of $10,000
3. Working miner with no dependents	$3000	$2000
4. Pensioned miner with no dependents	$3000	$2000
5. Pensioned miner with dependents	$3500	$2500
6. Accidental Death as a result of mine accident	Life insurance amount shown above for working miner plus $100 per month to spouse until her death or remarriage. If there is no surviving spouse, $100 per month payable to surviving children to age 22.	$10,000 plus $100 per month payable to spouse until her death or remarriage. If there is no surviving spouse, $100 per month payable to surviving children to age 22
7. Accidental Death off the job	Same benefits as accidental death as result of mine accident.	No benefits provided

Company Proposal
March 14, 1975

APPENDIX A

HOURLY AND DAILY WAGE RATES—8-HOUR SHIFT MINES

GRADE		EFFECTIVE DATE 3/ /75	3/ /76	3/ /77	CONCENTRATION OF CLASSIFICATIONS
6	HOURLY	8.23*	8.64*	9.00**	A. Coal Loading Shovel Operator
	DAILY	65.85*	69.14*	72.00**	B. Overburden Stripping Machine Oper.
					C. Master Electrician
5	HOURLY	7.94*	8.34*	8.67**	A. Electrician
	DAILY	63.54*	66.71*	69.38**	B. Machinist
					C. Mechanic
					D. Welder, First Class
4	HOURLY	7.65*	8.04*	8.36**	A. Shovel and Dragline Oiler
	DAILY	61.23*	64.29*	66.86**	B. Groundman
					C. Welder
					D. Mobile Equipment Operator II
3	HOURLY	7.26*	7.63*	7.93**	A. Repairman
	DAILY	58.12*	61.02*	63.46**	B. Stationary Equipment Operator
					C. Driller & Shooter
					D. Maintenance Trainee II (Max. 12 mos.
					E. Mobile Equipment Operator I
2	HOURLY	6.79*	7.13*	7.42**	A. Tipple Attendant
	DAILY	54.34*	57.06*	59.34**	B. Helpers
					C. Maintenance Trainee I (Max. 6 mos.

1	HOURLY	6.71*	7.05*	7.33**	A. Car Dropper
	DAILY	53.69*	56.38*	58.63**	B. Car Dumper
					C. Car Trimmer
					D. Sampler
					E. Truck Driver, Service
					F. Utility Man
					G. Laborer—Unskilled

* The cost-of-living adjustment applicable is to be paid to each Employee in addition to the Hourly and Daily Wages Rates provided for herein.

** The cost-of-living adjustment in effect on March , 1977, is to be added to the Hourly and Daily Wage Rates. Cost-of-living adjustments which occur after March , 1977, are to be paid in addition to the third year Hourly and Daily Wage Rates as adjusted in accordance with the preceding sentence.

For the Company .....

For the Union .....

Date .....

Company Proposal
March 14, 1975

APPENDIX A

HOURLY AND DAILY WAGE RATES—7¼-HOUR SHIFT MINES

GRADE		EFFECTIVE DATE 3/ /75	3/ /76	3/ /77	CONCENTRATION OF CLASSIFICATIONS
6	HOURLY	7.86*	8.26*	8.59**	A. Coal Loading Shovel Operator
	DAILY	57.00*	59.85*	62.24**	B. Overburden Stripping Machine Oper.
					C. Master Electrician
5	HOURLY	7.59*	7.97*	8.28**	A. Electrician
	DAILY	55.00*	57.75*	60.06**	B. Machinist
					C. Mechanic
					D. Welder, First Class
4	HOURLY	7.31*	7.68*	7.98**	A. Shovel and Dragline Oiler
	DAILY	53.00*	55.65*	57.88**	B. Groundman
					C. Welder
					D. Mobile Equipment Operator II
3	HOURLY	6.94*	7.29*	7.58**	A. Repairman
	DAILY	50.31*	52.83*	54.94**	B. Stationary Equipment Operator
					C. Driller & Shooter
					D. Maintenance Trainee II (Max. 12 mos.
					E. Mobile Equipment Operator I
2	HOURLY	6.49*	6.81*	7.09**	A. Tipple Attendant
	DAILY	47.04*	49.39*	51.37**	B. Helpers
					C. Maintenance Trainee I (Max. 6 mos.

1	HOURLY	6.41*	6.73*	7.00**	A. Car Dropper
	DAILY	46.48*	48.80*	50.76**	B. Car Dumper
					C. Car Trimmer
					D. Sampler
					E. Truck Driver, Service
					F. Utility Man
					G. Laborer—Unskilled

* The cost-of-living adjustment applicable is to be paid to each Employee in addition to the Hourly and Daily Wages Rates provided for herein.

** The cost-of-living adjustment in effect on March , 1977, is to be added to the Hourly and Daily Wage Rates. Cost-of-living adjustments which occur after March , 1977, are to be paid in addition to the third year Hourly and Daily Wage Rates as adjusted in accordance with the preceding sentence.

For the Company .....

For the Union .....

Date .....

APPENDIX A

CLASSIFICATION INDEX

CLASSIFICATION	JOB TITLE WITHIN CLASSIFICATION		
6-A Coal Loading Shovel Operator	Coal Loading Shovel Operator	Front End Loader—Coal	
6-B Overburden Stripping Machine Operator	Construction Mobile Crane Operator—Erection and Dismantlement	Dragline Operator Shovel Operator	Stripping Shovel Operator Wheel Operator
6-C Master Electrician	* Electrician Leader * Master Electrician	* Note: The electrician assigned to install electrical components and trouble-shoot electrical failures on electric shovels and draglines.	
5-A Electrician	Electrician Electrician, 1st Class	Electrician, Lineman	Tipple Electrician
5-B Machinist	Machinist	Machinist, 1st Class	
5-C Mechanic	Mechanic Mechanic, Garage Mechanic, 1st Class	Prep, Plant Mechanic Shop Mechanic	Truck Mechanic Truck & Tractor Mechanic
5-D Welder, 1st Class	* Welder, 1st Class * Welder Leader	* Note: Performing any welding work required, including vertical, overhead, and flat welding in accordance with approved standards.	
4-A Shovel & Dragline Oiler	Coal Loading Shovel Oiler Coal Stripping Shovel Oiler	Dragline Oiler Shovel Oiler	Shovel Oiler, Overburden Wheel Oiler
4-B Groundman	Groundmen Around Shovel	Groundmen on Wheel	
4-C Welder	Tipple Welder	Welder	Welder, 2nd Class

APPENDIX A

CLASSIFICATION INDEX

CLASSIFICATION	JOB TITLE WITHIN CLASSIFICATION		
4-D Mobile Equipment Operator II	Carryall Operator Dozer Operator (Rubber Tired and Crawler)	Front End Loader Grader Operator Le Tourneau Operator (Pan)	
3-A Repairman	Blacksmith Car Repairman Carpenter	Electrician, 2nd Class Machine Repairman Mechanic, 2nd Class	Plumber Repairman
3-B Stationary Equipment Operator	Auger Operator Boom Operator Dryer Operator Plant Operator	Retarder Man Retarder Operator Rock Crusher Operator Tipple Fireman	Tipple Operator Tipple Washer Operator Unit Train Loader Operator
3-C Driller & Shooter	Coal Driller Coal Shooter Drill Operator	Tampman Driller & Shooter	Shooter on Overburden Driller
3-D Maintenance Trainee II (Max. 12 mos.)	Maintenance Trainee II (Max. 12 mos.)	Electrician Trainee II (Max. 12 mos.)	
3-E Mobile Equipment Operator I	Haulage Trailer Operator Heavy Equipment Operator Payloader Operator Reclamation Tractor Operator Tractor Operator Truck Driver, Coal	Truck Driver, Overburden Truck Driver, Haulage High Lift Operator Hydraulic Equipment Oper. Locomotive Fireman Locomotive Operator	Low Boy Operator Mobile Crane Operator Semi-Tractor Driver Water Truck Driver (Sprinkler) Farm-Type Tractor Operator
2-A Tipple Attendant	Tippleman	Switchman	

2-B	Helpers	Electrician Helper Mechanic Helper Mechanic Helper, Mach. Shop Truck Mechanic Helper	Machinist Helper Greaser Serviceman Machinist, 2nd Class	Truck Oiler Welder Helper Tipple Oiler Beltman
2-C	Maintenance Trainee I (Max. 6 Mos.)	Maintenance Trainee (Max. 6 Mos.)	Electrician Trainee (Max. 6 Mos.)	
1-A	Car Dropper	Car Dropper	Trip Rider	
1-B	Car Dumper*	Dumper	* Note: A Car Dumper Operator shall be paid at the Job Class 3 Rate of pay when equipment is being operated to dump the car.	
1-C	Car Trimmer	Car Trimmer		
1-D	Sampler	Coal Sampler		
1-E	Truck Driver, Service	Supply Truck Driver Truck Driver	Truck Driver, Outside Pit	Truck Driver, Utility
1-F	Utility Man	Maintenance, Misc. Painter Preparation Man	Track Repairman Trackman Utility Man Water Carrier	Water Treater Driller Helper Pumper
1-G	Laborer—Unskilled	Car Cleaner Flagger Janitor Laborer Nitrate Bagger	Pit Hand Shoveler Pit Man Shop Laborer Slate Picker Tipple, All Other	Tipple Laborer Track Labor Yardman Auger Helper Shooter Helper

For the Company .....

For the Union .....

JOINT EXHIBIT 7(z)

W U
western union Telegram

DVB340(1708)(1-033101C006)PD 01/06/75 1706
TWX UMWA WASH
002 WASH DC 1 6 75
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UNITED MINE WORKERS OF AMERICA
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PLEASE BE ADVISED THAT THE FOLLOWING TELEGRAM WAS TRANSMITTED BY ME TODAY TO THE RECORDING SECRETARIES OF ALL LOCAL UNIONS REPRESENTING EMPLOYEES COVERED BY THE SUB-BITUMINOUS AND LIGNITE AGREEMENTS:

W U
western union Telegram

DEAR BROTHER:

NEGOTIATIONS WITH WESTERN SURFACE OPERATORS ARE IN PROGRESS IN DENVER, COLORADO. A FIRM DEADLINE OF JANUARY 12, 1975 HAS BEEN SET. UNLESS YOU ARE INSTRUCTED OTHERWISE, PLEASE CEASE ALL OPERATIONS AT 12:01 A.M., JANUARY 12, 1975.

FRATERNALLY,

MIKE TRBOVICH
NNNN

JOINT EXHIBIT 4(b)

UMWA 1974 PENSION PLAN

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UNITED MINE WORKERS OF AMERICA
1974 PENSION PLAN
EFFECTIVE DECEMBER 6, 1974

ARTICLE I—INTRODUCTION

Pursuant to Article XX of the Wage Agreement, the United Mine Workers of America 1974 Pension Plan (hereinafter referred to as the "Plan"), provides pension benefits as hereinafter set forth. The provisions of the Plan are effective December 6, 1974, (the "effective date") and are set forth below. Except in the case of total disability resulting from mine accidents occurring after the effective date, this Plan does not provide benefits to persons retiring on or before December 31, 1975, but such persons may be entitled to pension benefits under the United Mine Workers of America 1950 Pension Plan (hereinafter referred to as the "1950 Pension Plan").

A. *Definitions*

(1) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1974, as amended from time to time and any successor thereto. Any reference in this Plan to the Wage Agreement or to the bituminous coal wage agreement then in effect shall also refer (a) to the Sub-bituminous and Lignite Agreement and the National Coal Mine Construction Agreement with respect to any period for which such agreements provide that pension benefits shall be made available pursuant to this Plan or a predecessor plan established under the bituminous coal wage agreement, and (b) with respect to any period prior to the 1950 Bituminous Coal Wage Agreement, to any collective bargaining contract between the United Mine Workers of America and any employer in the bituminous coal industry.

(2) "Employer" means an employer who is signatory to the Wage Agreement, or, with respect to prior periods,

is signatory to the bituminous coal wage agreement then in effect.

(3) "Participant" means any person who is employed in a classified job for an Employer after the effective date and any person entitled to receive pension benefits under the Plan; provided, however, that any person who is not employed in a classified job for an Employer on the effective date shall not become a participant unless he obtains at least one year of credited service after the effective date, or unless he is subject to the provisions of Article II (F) (3).

(4) "1974 Pension Trust" means the trust established pursuant to the Wage Agreement to fund this Plan.

(5) "Trustees" means the Trustees of the 1974 Pension Trust, who shall be named fiduciaries pursuant to Section 402 of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as "ERISA"); provided, however, that the 1974 Pension Trust may be amended to designate other or additional named fiduciaries under said Trust and the Plan.

(6) "Credited Service" means signatory and nonsignatory service determined pursuant to Article IV.

B. *When Retirement Occurs*

For the purposes of this Plan, in the case of any participant, retirement shall be considered to occur on the last day of credited service, provided that on such day he was eligible for an immediate or deferred pension under this Plan.

ARTICLE II—ELIGIBILITY

A. *Age 55 Retirement*

Any participant who (a) has at least 10 years of signatory service or at least twenty years of credited service, including the required amount of signatory serv-

ice as set forth in Article IV(C) (6), and (b) has attained the age of 55 years (but not the age of 62) prior to retirement shall be eligible to retire on or after December 31, 1975, and shall upon his retirment (hereinafter "Age 55 Retirement") be eligible for a pension.

B. *Age 62 Retirement*

Any participant who (a) has at least 10 years of signatory service or at least twenty years of credited service including the required amount of signatory service as set forth in Article IV(C) (6), and (b) has attained the age of 62 years prior to retirement, shall be eligible to retire on or after December 31, 1975, and shall upon his retirement (herinafter "Age 62 Retirement") be eligible for a pension. Age 62 shall be considered the normal retirement age for purposes of ERISA or other applicable laws.

C. *Disability Retirement*

A participant who (a) has at least 10 years of signatory service prior to retirement, and (b) becomes totally disabled on or after the effective date as a result of a mine accident shall, upon his retirement (hereinafter "Disability Retirement"), be eligible for a pension. A participant shall be considered to be totally disabled only if by reason of such accident he is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

D. *Minimum Disability Retirement*

Any participant who (a) has less than 10 years of signatory service prior to retirement and (b) becomes totally disabled on or after the effective date as the result of a mine accident shall, upon his retirment (hereinafter "Minimum Disability Retirement"), be eligible for a pension. A participant shall be considered to be

totally disabled only if by reason of such accident he is subsequently determined to be eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

E. *Deferred Vested Retirement*

Any participant not eligible to receive a pension under any other provision of this Article II whose employment in a classified job with an Employer is terminated after December 31, 1975, for any reason and who at the time of retirement (or, if later, at the time of termination of employment with an Employer) has (a) at least 10 years of signatory service, or (b) at least 20 years of credited service including the required amount of signatory service as set forth in Article IV(C) (6) shall be eligible for a pension (hereinafter "Deferred Vested Pension"), upon attaining age 62, or, at the election of the participant, he shall be eligible for a reduced pension beginning at any time after he attains age 55. At the time of such termination, such participant shall be given an appropriate written notice of his eligibility and other relevant data.

F. *Nonduplication*

(1) A participant shall be entitled to receive a pension under only one of the foregoing paragraphs of this Article II with respect to any retirement.

(2) Except as provided in paragraphs (C), (D), or (F) (3) of this Article II, any person whose retirement occurs on or before December 31, 1975, shall not be entitled to receive pension benefits under this Plan, but shall be entitled only to receive such benefits as may be provided under the 1950 Pension Plan.

(3) Any person who (a) retires on or before December 31, 1975, (b) at the time of retirement is entitled to or, upon attaining age 55 would be entitled to, a pension benefit under the 1950 Pension Plan, and (c) is

again employed in a classified job for an Employer after December 31, 1975, shall upon his subsequent retirement (or, if later, upon attaining age 55) be eligible for a pension only under this Plan and not under the 1950 Pension Plan, in the amount hereinafter specified. The amount of pension for a participant described in this paragraph shall be the sum of the amount of pension to which such participant would be entitled upon attaining age 55 under the 1950 Pension Plan if he had not been employed in a classified job for an employer after December 31, 1975, plus the excess of (i) over (ii) where (i) is the pension to which such participant would be entitled except for this paragraph under Article III(A)(2) or III(B)(2) based upon all years of credited service under this Plan and (ii) is the pension to which such participant would be entitled under Article III(A)(2) or III(B)(2) based solely on his credited service prior to December 31, 1975.

G. *Employment for Vesting Purposes*

For all purposes of this Article II, if any participant's signatory service shall be less than the total of his years of employment after May 28, 1946, for Employers then signatory to the bituminous coal wage agreement then in effect (hereinafter referred to as "employment" for purposes of this Article), then such years of employment shall be used for purposes of any eligibility requirement of minimum signatory service under this Article in place of years of signatory service. Years of employment shall be computed by giving credit for one year of employment for any year for which the participant completed 1,000 hours of employment; provided that no credit shall be given for any year in which the participant completed less than 1,000 hours of employment; and provided further that (a) all years of employment before age 22 shall be disregarded, (b) all years of employment before January 1, 1971, shall be disregarded unless the participant completed at least 3 years of employment after

December 31, 1970; and (c) years of employment prior to any break in service shall be disregarded to the maximum extent permissable under section 203(b)(3) of ERISA. The provisions of this paragraph shall be interpreted and construed in accordance with the requirements of ERISA and the regulations issued thereunder.

ARTICLE III—AMOUNT OF PENSION

A. *Retirement in 1976*

A pension granted to a participant who retires on and after December 31, 1975 (the effective date, with respect to disability retirement and minimum disability retirement), but prior to January 1, 1977 pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below.

(1) *Age 55 Retirement Pension*

(a) a deferred pension, commencing after attainment of age 62, computed under the provisions of paragraph 2 below; or, at the election of the participant,

(b) an immediate pension, equal to the deferred pension to which he would have been eligible under (a) above had he so elected, reduced by ¼ of one percent (1%) for each full month (3 percent (3%) per year) between the date on which pension benefits began and the date on which participant attains age 62.

(2) *Age 62 Retirement Pension*

The amount of pension for Age 62 Retirement shall be determined as follows:

(a) for each year of credited nonsignatory service as defined herein, $7.50 per month;

(b) for each of the first 10 years of credited signatory service, $12.00 per month;

(c) for each year of credited signatory service in excess of 10 years but not to exceed 20 years, $12.50 per month;

(d) for each year of credited signatory service in excess of 20 years but not to exceed 30 years, $13.00 per month;

(e) for each year of credited signatory service in excess of 30 years, $13.50 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof.

(3) *Disability Retirement Pension*

For a participant whose disabling accident occurs after the effective date but prior to January 1, 1976, the pension payment shall be $125.00 per month. Effective January 1, 1976, such a participant's pension payment, subject to a minimum payment of $125.00 per month, shall be computed under the provisions of paragraph (2) above.

For a participant whose disabling accident occurs on and after January 1, 1976, the pension payment shall be computed under the provisions of paragraph (2) above.

(4) *Minimum Disability Retirement Pension*

The amount of pension for Minimum Disability Retirement shall be $125.00 per month.

(5) *Deferred Vested Pension*

The amount of a deferred vested pension shall be a pension, commencing on or after attainment of age 62, computed under the provisions of Subsection A(2) of this Article III or, at the participant's election, between ages

55 and 62 with the pension payable reduced to its actuarial equivalent pursuant to Appendix A; provided, however, that in the case of any participant with at least twenty (20) years of credited service, such pension shall not be reduced to less than $150.00 per month.

B. *Retirement in 1977*

A pension granted to a participant who retires on or after December 31, 1976 pursuant to Article II shall consist of a pension amount payable in monthly installments provided in accordance with the provisions of this Article III as set forth below.

(1) *Age 55 Retirement Pension*

(a) a deferred pension, commencing after attainment of age 62, computed under the provisions of paragraph 2 immediately below; or, at the election of the participant, (b) an immediate pension, equal to the deferred pension to which he would have been eligible under (a) above had he so elected, reduced by ¼ of one percent (1%) for each full month (three percent (3%) per year) between the date on which pension benefits began and the date on which the participant attains age 62.

(2) *Age 62 Retirement and Disability Retirement Pension*

The amount of pension for Age 62 Retirement or Disability Retirement, subject to a minimum pension of $125.00 per month for Disability Retirement, shall be determined as follows:

(a) for each year of credited nonsignatory service as defined herein, $7.50 per month;

(b) for each of the first 10 years of credited signatory service, $12.50 per month;

(c) for each year of credited signatory service in excess of 10 years but not to exceed 20 years, $13.00 per month;

(d) for each year of credited signatory service in excess of 20 years but not to exceed 30 years, $13.50 per month;

(e) for each year of credited signatory service in excess of 30 years, $14.00 per month.

Proportional credit shall be allowed for any fractional years of credited service pursuant to Article IV hereof.

(3) *Minimum Disability Retirement Pension*

The amount of pension for minimum disability retirement shall be $125.00 per month.

(4) *Deferred Vested Pension*

The amount of a deferred vested pension shall be a pension, commencing on or after age 62, computed under the provisions of paragraph B(2) of this Article III, or, at the participant's election, between ages 55 and 62 with the pension payable reduced to its actuarial equivalent pursuant to Appendix A; provided, however, that in the case of any participant with at least twenty (20) years of credited service, such pension shall not be reduced to less than $150.00 per month.

C. *Increased Pension*

Effective as of January 1, 1977, the pension of any participant who retired under this Plan on or before December 31, 1976, and whose pension was computed under the provisions of A-1 and A-2 of this Article III shall be increased by $10.00 per month. This increase will not be applicable to those participants who are eligible for either a Minimum Disability Retirement Pension or who become eligible to receive a Deferred Vested Pension.

D. *Commencement, Suspension and Termination of Pensions*

Payments to pensions shall be subject to the following:

(1) The first payment on any pension shall be made for the month following the month in which the participant becomes eligible for a pension in accordance with Article II.

(2) The last payment shall be for the month in which the pensioner dies.

(3) Pension payments shall be payable on the first day of each month at the pensioner's last address of record.

(4) Pension payments shall be suspended for any month in which the pensioner is employed, subsequent to commencement of such payments, in the bituminous coal industry, in the same trade or craft, and in the same geographic area covered by this Plan. The geographic area covered by this Plan shall be the United States of America. The provisions of this paragraph shall be interpreted in accordance with any regulations issued pursuant to Section 203(a)(3) and (B) of ERISA.

(5) Any participant who continues to be employed by an Employer after his retirement shall not be entitled to receive pension benefits under this Plan until such time as he is no longer employed by an Employer.

ARTICLE IV—CREDITED SERVICE

A. *Nonsignatory Service*

Subject to the limitations in paragraph C of this Article IV, credited service is a period during which the participants meets the requirements of subparagraphs (1), (2), (3), (4) or (5) below. Any credited service shall be nonsignatory service unless it qualifies as signatory service pursuant to Article IV (B) hereof.

(1) A participant shall receive credit for a year of service for any year in which he worked, subsequent to

December 31, 1936, as an employee in a job classified in the then existing bituminous coal wage agreement for an employer in the coal industry for at least 1,000 hours of service, with credit given for the next lowest ¼ year in the event any employee works less than 1,000 hours of service as follows:

750—999 hours, ¾ year

500—749 hours, ½ year

250—499 hours, ¼ year

249 hours or less, 0

With respect to any period of such service for which records of hours of service are not available or it is not feasible in light of the administrative and cost difficulties involved to compile a record of hours of service, an applicant shall be deemed to have worked a thousand hours of service if he received wages in an amount equal to the product of (i) the lesser of 125 days or ½ the average number of days the bituminous mines in the United States were active, multiplied by (ii) the daily basic rate paid in the bituminous coal industry for that year; provided that for any year for which information is not available as to the average number of days the mines were active, the available data for the nearest year next preceding shall be used; provided further that if an applicant earned less than the minimum amount required for a year of service, credit for service shall be given to the next lowest ¼ year in the manner indicated with respect to hours of service.

(2) A participant shall receive credit for a year of service for any calendar year in which he worked, prior to January 1, 1937, as an employee in a job classified in the then existing coal wage agreement for an Employer in the bituminous coal industry, in a minimum of at least six (6) months during a calendar year, provided that if the applicant worked in less than six (6) months, credit for service shall be awarded to the next lowest one-fourth

(¼) year, based upon service in six (6) months equalling a year's service.

(3) A participant shall receive credit for a year of service for any year in which he received state workmen's compensation payments pursuant to an award as a result of an occupational disease or injury sustained in the mine while regularly employed in a classified job under the bituminous coal wage agreement then in effect, provided; in the case of occupational disease, the participant had been so employed by an Employer signatory to the Wage Agreement then in effect for at least ten (10) years after May 28, 1946. Credit shall be given up to a maximum of four (4) years service credit from date of injury, or from the date of last employment in case of occupational disease provided the participant did not work regularly during the compensable period. Benefits awarded pursuant to the Federal Coal Mine Health and Safety Act of 1969 shall be deemed "state workmen's compensation payments" within the meaning of this section, only if the miner was last regularly employed in the coal industry after the enactment date of the Act, December 30, 1969, in a classified job under the bituminous coal wage agreement then in effect, and had been so employed by an operator signatory to the agreement for at least ten (10) years after May 28, 1946. In no event shall any service be credited under this paragraph A-3 with respect to periods after the effective date.

(4) A participant shall receive credit for a year of service for any year in which he rendered service as an employee of the United Mine Workers of America in the coal industry immediately following regular employment in a classified job under the bituminous coal wage agreement then in effect; provided that the participant returned to work in a clasified job within twelve (12) months after the date of his last employment by United Mine Workers of America; and provided further that the participant is not covered by the pension or retirement plan of the United Mine Workers of America. Service

credit for such period shall be computed in the same manner as credit is computed for service prior to 1937, as described in paragraph 2 hereof.

(5) A participant shall receive credit for a year of service for any year in which he served in the military service of the United States in any war, national emergency, or international police action, immediately following regular employment in a classified job under the bituminous coal wage agreement then in effect, provided that credit for such service shall be limited to the original period of enlistment or obligated military service; and provided further that the participant returned to work in a classified job within twelve (12) months after his date of separation from the military service, unless he was precluded from doing so by service connected sickness, accident, or other disability, and returns to work in a classified job when no longer precluded by such disability. Service credit for the period of military service shall be computed in the same manner as credit is computed for service prior to 1937, as described in paragraph 2 above.

B. *Signatory Service*

Credited signatory service is:

(1) Service as defined in paragraph A(1) hereof during which a participant worked as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect.

(2) Service prior to the effective date as defined in paragraph A(3) hereof during which a participant received state workmen's compensation payments if such payments are pursuant to an award as a result of an occupational disease or injury awarded after May 28, 1946, and if the participant was last regularly employed prior to such service as an employee in a classified job for an Employer signatory to the bituminous coal wage agreement then in effect.

(3) Service during which a participant receives weekly Sickness and Accident Benefits pursuant to Article XI of the Wage Agreement.

(4) Service as defined in paragraph A(5) hereof during which a participant served in the military service of the United States, provided that the classified employment referred to therein (both before and after military service) is for an Employer signatory to the bituminous coal wage agreement then in effect and provided further, however, that for military service credited after December 31, 1974, the participant returned to work in a classified job within ninety (90) days after his date of separation from the military service or such longer period as may be allowed by law.

(5) Service (within the meaning of paragraph A (1) hereof) by an employee in a classified job for an Employer not signatory to the bituminous coal wage agreement then in effect if (i) such service is continuous, (ii) such Employer becomes a signatory to the bituminous coal wage agreement after the effective date as a result of recognizing the UMWA as the bargaining representative for its employees, (iii) the employee is working in a classified job with such Employer at the time such Employer becomes signatory to the bituminous coal wage agreement, and (iv) such employee remains in a classified job with such Employer during the twenty-four month period immediately following the date on which such Employer becomes signatory to the bituminous coal wage agreement; provided, however, that not more than ten (10) years of nonsignatory service may be recognized or awarded as signatory service to any person pursuant to this paragraph (5).

C. *Additional Rules Concerning Credited Service*

(1) Except as provided in Article IV(B)(5), employment after April 1, 1971 will not constitute credited

service under paragraph A-1 hereof unless such employment was in a classified job for an Employer.

(2) An applicant shall not be credited with more than one year of service for any calendar year by reason of any combination of the rules of this Article IV.

(3) The maximum number of years of nonsignatory service which may be included in the credited service of any participant retiring after December 31, 1981 shall be the number of years by which twenty years exceeds such participant's signatory service, but not in excess of ten years.

(4) No credit for service shall be awarded a participant for any period in which he was directly connected with the ownership, operation or management of a mine; provided, however, that in the case of any participant who received credit for such service before July 1, 1974 under the terms of the Pension Plan established under the United Mine Workers of America Welfare and Retirement Fund of 1950, credit shall be awarded for any period prior to July 1, 1975, in which the participant worked as an employee in a classified job in a mine in which he had no controlling interest, as a member of a cooperative or gang-working crew which shared the profits and losses, and which was operated under the bituminous coal wage agreement then in effect; and, provided further, that in the case of a participant who received credit for service before July 1, 1974, under the terms of the Pension Plan established under the Mine Workers of America Welfare and Retirement Fund of 1950, credit for signatory service shall be awarded for any period prior to July 1, 1975 during which such participant worked in a classified job pursuant to an agreement to produce coal for a signatory coal company which exercised control over the operation of the mine and was responsible for royalty payments on such coal produced to the 1974 Pension Trust or its predecessor.

(5) The following maximum years of nonsignatory service may be included in credited service under this Plan:

Date of Retirement	Maximum Years of Nonsignatory Service
Prior to December 31, 1976	15
January 1, 1977 to December 31, 1977	14
January 1, 1978 to December 31, 1978	13
January 1, 1979 to December 31, 1979	12
January 1, 1980 to December 31, 1980	11
January 1, 1981 and thereafter	10

(6) A participant with less than ten years of signatory service shall not be entitled to receive a pension under paragraph (A), (B) or (E) of Article II unless such participant has at least twenty years of credited service, including at least the following minimum number of years of signatory service:

Date of Retirement	Years of Signatory Service Required
Prior to December 31, 1976	Five (5) Years
January 1, 1977 to December 31, 1977	Six (6) Years
January 1, 1978 to December 31, 1978	Seven (7) Years
January 1, 1979 to December 31, 1979	Eight (8) Years
January 1, 1980 to December 31, 1980	Nine (9) Years
January 1, 1981 and thereafter	Ten (10) Years

(7) Except as provided in Article V, service credits shall not be accrued subsequent to the effective date of pension payments.

(8) In the case of any participant, the last day of credited service shall be the last day on which the participant works as an employee in a classified job for an Employer, unless such participant continues to accrue credited service during the period for which he receives weekly sickness and accident benefits pursuant to Article XI of the Wage Agreement, in which case the last day of credited service shall be the last day for which such sickness and accident benefits are paid.

(9) An employee who is regularly employed in a classified job for an Employer and who performs supervisory duties on a temporary basis for not more than 120 work days during any consecutive period of 12 months shall be deemed to be employed in a classified job during the days on which he performs such supervisory duties.

ARTICLE V—REEMPLOYMENT AFTER ATTAINMENT OF PENSION ELIGIBILITY

A. Any participant who has been retired and receiving a pension under this Plan and who shall be reemployed in a classified job by an Employer shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, upon his subsequent retirement, be granted a pension equal to the sum of the pension he was previously receiving plus the excess of (i) over (ii) where (i) is the pensior to which such participant would be entitled at the time of such retirement, based upon all years of credited service under the Plan and (ii) is the pension to which such participant would be entitled at the time of such retirement, based solely on his credited service at the time of his previous retirement.

B. Any participant eligible for a deferred vested pension under this Plan who shall be reemployed in a classified job by an Employer prior to the commencement of

pension benefits shall, for the purpose of calculating any subsequent pension benefits to which he may become entitled, be granted his credited service applicable to the deferred vested pension plus his credited service accrued after such reemployment.

C. Any participant who is reemployed in a classified job by an Employer after attainment of eligibility for a deferred vested pension under this Plan, whose employment is subsequently terminated and who at that time is not eligible for a pension under any provision of Article II by reason of Article IV(C)(6), shall be considered to be eligible for the deferred vested pension for which he was eligible prior to such reemployment and upon application for pension the date of his retirement shall be considered to be the date of retirement which would, upon application for pension, have been applicable to the deferred vested pension for which he was eligible prior to such reemployment.

ARTICLE VI—SURVIVING SPOUSE BENEFIT

A. (1) Except as provided in paragraph (B), there is hereby provided a Surviving Spouse Benefit for any participant who (a) has retired and is receiving a pension under this Plan, except a participant receiving a deferred vested pension who has not completed at least twenty years of credited service, (b) has not retired but at the date of his death otherwise met the eligibility requirements for an immediate pension under Article II(A), (B), (C) or (D) under this Plan, and (c) is over age 55 with at least twenty years of credited service and who has retired and is entitled to elect an immediate pension under Article II(A) or II(E) at the date of his death.

(2) The amount of such benefit shall be equal to 50% of the amount of the participant's pension at the time of his death or, in the event the participant dies after age 55 at a time when he was eligible to elect a pension or

to retire and receive a pension under Article II, but prior to his receipt of a pension, 50% of the amount of the pension he would have received if he had elected a pension or retired and become entitled to a pension as of the date immediately preceding the date of his death.

(3) The Surviving Spouse Benefit will not be effective unless the participant and his spouse have been married throughout the nine-month period ending on the date of the participant's death or unless such nine-month requirement would be waived for purpose of determining entitlement to widow's insurance benefits under the Social Security Act.

(4) Payment to an eligible spouse will commence as of the first of the month following the month in which the participant's death occurs and the final payment shall be made for the month in which the spouse's death occcurs.

B. (1) Any participant who is not employed in a classified job for an Employer on the effective date is not covered for a Surviving Spouse Benefit under this Article unless (a) he obtains at least three years of credited service after the effective date, (b) he had ceased to be employed in a classified job as a result of (1) layoff, (ii) nonoccupational disability or accident, or (iii) occupational injury for which he was receiving workmen's compensation, or (c) he dies at a time when he is employed in a classified job for an Employer.

(2) Any participant who retires on or before December 31, 1975, and is again employed in a classified job for an Employer after such retirement, is not covered for a Surviving Spouse Benefit under this Article unless (a) he obtains at least three years of credited service after such retirement, or (b) such retirement resulted from (i) layoff, (ii) nonoccupational disability or accident, or (iii) occupational injury for which workmen's compensation benefits were awarded, or (c) he dies at a time when he is employed in a classified job for an Employer.

ARTICLE VII—JOINT AND SURVIVOR ANNUITIES

A. Notwithstanding any other provision of this Plan, if a participant qualifies for a pension under this Plan but is not covered for a surviving spouse benefit, the pension benefit otherwise provided to such participant shall be reduced actuarially pursuant to Appendix B and 50% of such reduced pension benefit will be continued, after the death of the participant, for the life of any qualified surviving spouse; provided, however, that such participant shall have a reasonable period before the starting date of his pension benefit to elect not to take a joint and survivor annuity as provided for in this Article and instead to receive a pension benefit for his life only which shall be computed pursuant to Appendix A and shall be the actuarial equivalent of the joint and survivor annuity computed under Appendix

B. Prior to the exercise of an election under this paragraph, the participant must be provided with a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election not to receive such annuity. In the event a participant elects not to receive a joint and survivor annuity, such election shall not become effective if the participant dies within a period of two years beginning on the date of such election. A qualified surviving spouse shall be any spouse who has been married to the participant for at least nine months prior to his death, unless such nine-month requirement would be waived for purposes of determining entitlement to widow's insurance benefits under the Social Security Act.

In the event that a participant who was subject to this Article and who was entitled to elect to receive a pension benefit shall die prior to receipt of a pension, his qualified surviving spouse shall be entitled to receive a survivor's benefit in the form of an annuity for life in an amount equal to 50% of the pension benefit the decedent

would have received if he had elected to receive a pension beginning on the date immediately preceding the date of death.

Payment to a qualified surviving spouse under this Article will commence as of the first of the month, following the month in which the participant's death occurs and the final payment shall be made for the month in which the spouse's death occurs.

ARTICLE VIII—MISCELLANEOUS

A. *Determination of Eligibility*

The Trustees or such other named fiduciaries as may be properly designated shall have full and final determination as to all issues concerning eligibility for benefits.

B. General

(1) The Trustees are authorized to promulgate rules and regulations to implement this Plan, and those rules and regulations shall be binding upon all persons dealing with and participants claiming benefits under this Plan.

(2) No benefit payable under this Plan shall be subject in any way to alienation, sale, transfer, assignment, pledge, attachment, garnishment, execution, or encumbrance of any kind, and any attempt to accomplish the same shall be void.

(3) This Plan may be amended pursuant to the provisions of Article XX of the Wage Agreement or may be terminated during the life of the Wage Agreement by agreement of the parties thereto, provided, however, that:

(a) this Plan shall not be amended or terminated in such a manner as would cause or permit any part of the assets in the 1974 Pension Trust to be diverted to purposes other than the exclusive benefit of the participants and their beneficiaries; (b) this Plan shall not be amended to deny to a participant retroactively any benefits to which he was entitled under this Plan, unless such amendment is necessary to

conform this Plan to, or to satisfy the conditions of any law, governmental regulations or ruling.

(4) Upon the termination of this Plan or the complete discontinuance of contributions to the 1974 Pension Trust, this Plan shall remain in force and effect for the period necessary to complete the payment of benefits in accordance with the terms of this Plan to the extent assets in the 1974 Pension Trust are available to pay such benefits.

(5) Forfeitures arising from the operation of the Plan shall not be used to increase the benefits which otherwise would be received under this Plan.

(6) Any participant or beneficiary whose claim for benefits under this Plan has been denied shall be (a) provided with adequate notice in writing setting forth the specific reasons for such denial, which notice shall be written in a manner calculated to be understood by the participant, and (b) afforded a reasonable opportunity for a full and fair review of the decision denying the claim by an appropriate named fiduciary or a person properly designated to carry out such responsibility.

(7) The Trustees are hereby authorized to allocate fiduciary responsibilities in any manner permitted pursuant to section 405(c) of ERISA and to appoint an investment manager or managers as permitted by section 402(c) of ERISA.

(8) Contributions to the 1974 Pension Trust to fund the benefits under this Plan shall be paid solely by the Employers in accordance with Article XX of the Wage Agreement.

APPENDIX A

Actuarial Equivalence Factors for Deferred Vested Retirement Benefits Commencing Prior to Age 62

The following factors are to be multiplied by the full accrued benefit payable commencing at normal retirement age 62 to yield the equivalent benefit payable commencing at the indicated age:

AGE		Actuarial Equivalence Factor	AGE		Actuarial Equivalence Factor
Yrs.	Mos.		Yrs.	Mos.	
55	0	.522	57	0	.621
	1	.526		1	.626
	2	.529		2	.631
	3	.533		3	.636
	4	.537		4	.641
	5	.541		5	.646
	6	.545		6	.651
	7	.549		7	.655
	8	.553		8	.660
	9	.557		9	.665
	10	.561		10	.675
	11	.565		11	.675
56	0	.569	58	0	.680
	1	.573		1	.685
	2	.577		2	.691
	3	.582		3	.696
	4	.586		4	.702
	5	.590		5	.707
	6	.595		6	.713
	7	.599		7	.718
	8	.604		8	.724
	9	.608		9	.729
	10	.612		10	.735
	11	.617		11	.740

APPENDIX A—Continued

AGE		Actuarial Equivalence	AGE		Actuarial Equivalence
Yrs.	Mos.	Factor	Yrs.	Mos.	Factor
59	0	.746	60	0	.820
	1	.752		1	.827
	2	.758		2	.834
	3	.765		3	.841
	4	.771		4	.848
	5	.777		5	.855
	6	.783		6	.863
	7	.789		7	.870
	8	.796		8	.877
	9	.802		9	.884
	10	.808		10	.891
	11	.814		11	.898
61	0	.905			
	1	.913			
	2	.920			
	3	.928			
	4	.936			
	5	.944			
	6	.952			
	7	.960			
	8	.968			
	9	.976			
	10	.984			
	11	.992			
62	0	1.000			

Actuarial Basis: 95% of 1959-61 U.S. Total Male Population Mortality Table at 5% Interest.

APPENDIX B

TABLE OF PERCENTAGES TO BE APPLIED AGAINST PENSION PAYABLE TO PARTICIPANT UNDER JOINT AND SURVIVOR ANNUITIES

AGE OF PARTICIPANT

AGE OF SPOUSE	55	56	57	58	59	60	61	62
	%	%	%	%	%	%	%	%
50	85.1	84.2	83.3	82.3	81.2	80.2	79.1	77.9
51	85.6	84.7	83.7	82.7	81.7	80.7	79.6	78.5
52	86.0	85.1	84.2	83.2	82.2	81.2	80.1	79.0
53	86.5	85.6	84.7	83.7	82.8	81.7	80.7	79.6
54	86.9	86.1	85.2	84.3	83.3	82.3	81.2	80.1
55	87.4	86.6	85.7	84.8	83.8	82.8	81.8	80.7
56	87.9	87.1	86.2	85.3	84.4	83.4	82.4	81.3
57	88.3	87.5	86.7	85.8	84.9	84.0	83.0	81.9
58	88.8	88.0	87.2	86.4	85.5	84.5	83.6	82.6
59	89.3	88.5	87.7	86.9	86.0	85.1	84.2	83.2
60	89.7	89.0	88.3	87.4	86.6	85.7	84.8	83.8
61	90.2	89.5	88.8	88.0	87.2	86.3	85.4	84.5
62	90.7	90.0	89.3	88.5	87.7	86.9	86.0	85.1

Pension Payable to Surviving Spouse will be equal to 50% of the Participant's Pension as Reduced in Accordance with the above Table.

JOINT EXHIBIT 14(c)

UMWA 1974 PENSION TRUST

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UNITED MINE WORKERS OF AMERICA 1974 PENSION TRUST

Pursuant to Article XX of the Wage Agreement, there is hereby established a trust to be known as the "United Mine Workers of America 1974 Pension Trust" (hereinafter referred to as "1974 Pension Trust") for the purpose of making benefit payments pursuant to the provisions of the United Mine Workers of America 1974 Pension Plan. The provisions of said 1974 Pension Trust are effective December 6, 1974, and are as set forth below.

ARTICLE I

The following terms shall have the meanings herein set forth:

(1) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1974, as amended from time to time and any successor thereto. Any reference in this Trust to the Wage Agreement or to the bituminous coal wage agreement then in effect shall also refer (a) to the Sub-bituminous and Lignite Agreement and the National Coal Mine Construction Agreement with respect to any period for which such agreements provide that pension benefit payments shall be made available pursuant to this Trust or a predecessor Trust established under the bituminous coal wage agreement, and (b) with respect to any period prior to the 1950 Bituminous Coal Wage Agreement, to any collective bargaining contract between the United Mine Workers of America and any employer in the bituminous coal industry.

(2) "Employer" means an employer who is signatory to the Wage Agreement or, with respect to prior periods, was signatory to the bituminous coal wage agreement then in effect.

(3) "Plan" shall refer to the "United Mine Workers of America 1974 Pension Plan" established pursuant to Article XX of the Wage Agreement.

(4) "Trustees" shall mean the trustees of this Trust designated in accordance with the provisions of Article II hereof, who shall be the named fiduciaries required pursuant to Section 402 of the Employee Retirement Income Security Act of 1974 (hereinafter sometimes referred to as "ERISA"), provided, however, that this instrument may be amended pursuant to Article XI hereof to designate other or additional named fiduciaries.

(5) "UMWA" or "Union" shall mean the United Mine Workers of America.

ARTICLE II

The 1974 Pension Trust shall be administered by a Board of three Trustees, one of whom shall be appointed as a representative of the Employers, one of whom shall be appointed as a representative of the Union, and one of whom shall be a neutral party selected by the other two. The Union may remove for cause the Trustee appointed by it and the Employers may remove for cause the Trustee appointed by them. The neutral party may be removed for cause by the joint action of the Trustee appointed by the Union and the Trustee appointed by the Employers.

In the event of resignation, death, removal, inability or unwillingness to serve of the Trustee appointed by the Employers or the Trustee appointed by the Union, the Employers shall appoint the successor of the Trustee originally appointed by them, and the Union shall appoint the successor of the Trustee originally appointed by it. In the event of resignation, death, removal, inability or unwillingness to serve of the neutral Trustee, the Trustee appointed by the Employers and the Trustee appointed by the Union shall designate the successor neutral Trustee. In the event of a deadlock on the designation or agreement as to any future neutral Trustee, an impartial umpire shall be selected either by agreement of the two Trustees, representatives of the contracting parties hereto, or by petition by either of the contracting

parties hereto to the United States District Court for the District of Columbia for the appointment of such an impartial umpire, all as made and provided in Section 302(c) of the Labor-Management Relations Act, 1947.

The representative of the Employers on the Board of Trustees shall be C. W. Davis, Bluefield, West Virginia; the representative of the Union on said Board of Trustees shall be Harry Huge, Washington, D.C.; and Paul R. Dean, Washington, D.C., is appointed as the neutral Trustee. Said three Trustees so named and designated shall constitute the Board of Trustees to administer the 1974 Pension Trust.

It is agreed by the contracting parties hereto that the Trustees herein provided for or their duly appointed successors, shall serve for the duration of the Wage Agreement and as long thereafter as the proper continuation and administration of said Trust shall require.

The Trustee designated by the Union shall be the Chief Executive Officer and Chairman of the Trustees.

This Trust shall have its principal place of business in Washington, D.C., or such other place as may be determined by the Trustees.

ARTICLE III

The 1974 Pension Trust established with the Trustees hereunder is an irrevocable trust created pursuant to Section 302(c) of the Labor-Management Relations Act, 1947, which shall endure as long as the purposes for its creation shall exist. The 1974 Pension Trust consists of such sums of money and other property, acceptable to the Trustees as from time to time shall be held by or paid or delivered to the Trustees and such earnings, profits, and increments thereon as may occur from time to time. All such money and other property delivered to the Trustees and all investments and reinvestments made therewith or proceeds thereof and all earnings and profits thereon, less the payments which at the time of

reference shall have been made by the Trustees as authorized herein, are referred to herein as the "assets of the 1974 Pension Trust." The assets of the 1974 Pension Trust shall be held by the Trustees and dealt with in accordance with the express provisions of this instrument and the requirements of law.

The monies to be paid into the 1974 Pension Trust shall not in any manner be liable for or subject to the debts, contracts, liabilities or torts of the parties entitled to such money, *i.e.*, the beneficiaries of said 1974 Pension Trust under the terms of this instrument.

ARTICLE IV

The Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, are directed and authorized (a) to hold, to invest and to reinvest the assets of the 1974 Pension Trust as provided herein; (b) to pay monies from the 1974 Pension Trust in accordance with the terms of the Plan for the purpose of distributing the benefits payable under the Plan; and (c) to pay the cost of administration of the 1974 Pension Trust as hereinafter provided.

ARTICLE V

The Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, shall have full discretionary powers of management and control, of sale and resale, in fee simple or otherwise, mortgage, lease, and pledge, of the assets of the 1974 Pension Trust, and shall not be restricted to investments in securities or property of the character now or hereafter authorized by law or rules of the United States District Court for the District of Columbia. The assets of the 1974 Pension Trust shall be invested and reinvested, without distinction between principal and income, in securities and other forms of property, including but not

limited to, real estate, corporate stocks (common and preferred), debentures, bonds and other obligations whether or not secured. The Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, shall not be limited to the amount or type of any investment in relation to the amount or type of investments constituting the Trust as a whole, except as provided by ERISA.

The Trustees or such other persons as may be properly designated pursuant to Article IX hereof may, in their discretion, keep such portion of the assets of the 1974 Pension Trust in cash or cash balances as the Trustees may determine to be reasonably necessary to satisfy the current needs of the Trust.

ARTICLE VI

Neither by way of limitation nor in derogation, but in amplification of any powers granted herein, the Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, are further authorized:

(1) To purchase, sell, exchange, convey, transfer or dispose of, and also to grant options with respect to, any property, whether real or personal, at any time held by them and to make any sale, private or public;

(2) To retain, manage, operate, repair, improve, develop, preserve, mortgage or lease for any period any real property interests or rights held by the Trustees upon such terms and conditions as the Trustees deem proper, either alone or by joining with others, using other trust assets for any of such purposes if by them deemed advisable; to modify, extend, renew, or otherwise adjust any or all of the provisions of any such mortgage or lease, including the waiver of rentals, if by them deemed advisable;

(3) To compromise, compound and settle any debt or obligations due from third persons to them or to third persons from them, as Trustees hereunder, and to reduce

the rate of interest on, to extend or otherwise modify, or to foreclose upon default or otherwise enforce, any such obligations;

(4) To vote in persons or by proxy and to give general or special proxies or powers of attorney, with or without power of substitution, on any securities or other investments held by them;

(5) To exercise any rights or options appurtenant to any securities or other property held by them for the conversion thereof into other securities or property, or to exercise any rights or options held by them to subscribe for or purchase additional securities or other property, and to make any and all necessary payments with respect to any such conversion or exercise;

(6) To join in, dissent from or oppose, the reorganization, recapitalization, consolidation, sale or merger of corporations or properties of which they may hold stocks, bonds or other securities or in which they may be interested, upon such terms and conditions as they may deem wise; to pay any expenses, assessments or subscriptions in connection therewith and to accept any securities or property (whether or not the Trustees would be authorized to then invest in such securities or property) which may be issued upon any such reorganization, recapitalization, consolidation, sale or merger, and thereafter to hold the same;

(7) To make, execute, acknowledge and deliver any and all deeds, leases, mortgages, assignments, documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(8). To enforce any right, obligation or claim in their absolute discretion and in general to protect in any way the interest of the Trust, either before or after default with respect to any such right, obligation or claim, and, in case they shall consider such action for the best interest of the Trust, in their absolute discretion to abstain from the enforcement of any right, obligation or claim and to abandon any property, whether real or personal, which at any time may be held by them;

(9) To borrow or raise money for the purpose of the Trust in such amount and upon such terms and conditions as in their absolute discretion they may deem advisable; and for any sums so borrowed to issue their promissory note as Trustees and to secure the repayment thereof by mortgaging or pledging all or any part of the Trust; and no person lending money to the Trustees shall be bound to see to the application of the money loaned or to inquire into the validity, expediency or propriety of any such borrowing;

(10) To employ suitable agents and counsel from time to time, and to pay them reasonable expenses and compension;

(11) To retain without liability for depreciation any securities or property at any time purchased and/or received by the Trustees as a part of the Trust;

(12) To do all acts which may be necessary to comply with any of the requirements of ERISA or any other federal law;

(13) To enter into any and all contracts and agreements for carrying out the terms of the Plan and the 1974 Pension Trust and for the administration of such Plan and Trust; and

(14) To do all acts which they may deem necessary or proper and to exercise any and all powers of the Trustees under this instrument under such terms and conditions as they may deem to be for the best interest of the Trust.

The Trustees may, in their sole discretion, cause the securities which from time to time may comprise the Trust, to be registered in their name as Trustees hereunder, or in the name of their nominee without disclosing the ownership thereof or to take and keep the same unregistered, and to retain them, or any part thereof, in such condition that they will pass by delivery.

ARTICLE VII

The expenses incurred by the Trustees in the performance of their duties hereunder, including reasonable compensation for the Trustees in accordance with Sec-

tion 408(c)(2) of ERISA, for agents, and for service of counsel rendered to the Trustees and expenses incident thereto, and all other proper charges and disbursements of the Trustees, including all taxes of any kind and all kinds whatsoever that may be levied or assessed under existing or future laws of any jurisdiction upon or in respect of the Trust hereby created or any money, property or securities forming a part thereof, shall be paid by the Trustees out of the Trust.

ARTICLE VIII

A Trustee shall not be liable for the making, retention, or sale of any investment or reinvestment made by him as herein provided; for any loss to or diminution of the Trust; or for anything done or omitted under this instrument, except for his own willful misconduct or lack of good faith, or any other action or omission for which personal liability is imposed under Part 4 of Subtitle B of Title I of ERISA. Any Trustee may consult with legal counsel concerning any questions which may arise with reference to his duties under this instrument, and, except as otherwise provided by ERISA, the opinion of such counsel shall be full and complete protection in respect to any action taken or suffered by such Trustee hereunder in good faith and in accordance with the opinion of such counsel.

ARTICLE IX

The Trustees, or such other persons as may be properly designated pursuant to Article IX hereof, shall keep accurate and detailed accounts of all investments, receipts, and disbursements and other transactions hereunder, and such accounts, books and records relating thereto shall be open to inspection and audit by the parties hereto and by the beneficiaries of the 1974 Pension Trust at all reasonable times at the offices of the 1974 Pension Trust. The Trustees, or such other persons as may be properly designated pursuant to this Article IX shall be responsible for providing participants and bene-

ficiaries under the plan with all information required to be furnished pursuant to the provisions of ERISA or the regulations promulgated thereunder.

The Trustees, or such other persons as may be properly designated pursuant to this Article IX shall be responsible for maintaining records sufficient to comply with any requirements of ERISA and for the filing of all reports with the Labor Department, Treasury Department, and Pension Benefit Guaranty Corporation which may be required by any provision of ERISA or the regulations issued thereunder, including the plan description and reports specified by Section 101(b). A copy of each document or report provided to plan participants or beneficiaries or filed by the Trustees pursuant to the requirements of ERISA shall be sent to the Employers and to the Union unless the right to receive such copy has been waived in writing. The Trustees are authorized to apply for permission to implement an alternative method of satisfying any of the requirements of this Article IX in accordance with Section 110 of ERISA, and, upon receiving the approval of the Labor Department for such alternative method, may utilize such method in lieu of the corresponding requirements of ERISA and of Article IX of this instrument.

Within 90 days following the close of each calendar year, or following the close of each such other annual period as may be adopted by the Trustees, and within 90 days after a Trustee ceases to be a Trustee as provided for in Article II hereof, the Trustees shall file with the Employers and the Union a written report setting forth in such form and detail as they may request the transactions effected by the Trustees during such calendar year or other annual period or during the period from the close of such calendar year or other annual period to the date on which such Trustee's tenure ceases. The annual report shall incorporate the report of an independent certified public accountant and shall be the same as required by Section 103 of ERISA unless the

Employers and the Union shall jointly request that additional or supplemental information be incorporated in the report which they receive. Upon the expiration of ninety (90) days from the date of any report to the Employers and the Union, the Trustees shall be forever released and discharged from any liability or accountability to anyone as respects the propriety of their acts or transactions shown in the aforementioned report except as otherwise provided by law or with respect to any acts or transactions as to which the Employers or the Union shall file written objections with the Trustees within such period of ninety (90) days.

The Trustees are hereby authorized to allocate fiduciary responsibilities in any manner permitted pursuant to Section 405(c) of ERISA.

The Trustees may appoint an investment manager or managers to manage any investments held uner this instrument as permitted by Section 402(c) of ERISA.

ARTICLE X

Any action of the Employers which may be required hereunder may be taken by those Employers who at the time are parties to the Wage Agreement and who represent fifty-one percent (51%) or more of the total contributions made to this Trust during the calendar year (or such shorter period which may have elapsed after the effective date of this Trust), previous to that in which the action is taken, and the Trustees shall be fully protected in acting in accordance with any action taken by such Employers.

ARTICLE XI

The Employers and the Union reserve the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of this instrument, without reopening or otherwise affecting the integrity of any other provision of the Wage Agreement,

by a written agreement between the Employers and Union, provided, however, that such modification or amendment does not permit any part of the corpus or income of the Trust to be used for, or diverted to, purposes other than for the sole and exclusive benefit of the participants and their beneficiaries, and provided further, that the Employers and the Union have delegated to the Trustees the authority and responsibility to make certain changes and amendments as set forth in Article XX(h)(5) of the Wage Agreement.

ARTICLE XII

Notwithstanding anything to the contrary contained in this instrument, or any amendment thereto, it shall be unlawful for any part of the 1974 Pension Trust, other than such part as is required to pay taxes and administrative expenses, to be used for, or diverted to, purposes other than for the sole and exclusive benefit of the participants and beneficiaries of the Plan. Monies held by the 1974 Pension Trust do not constitute a part of the deceased beneficiary's estate which can be claimed by his administrator, executor, or heirs, unless such person or persons are otherwise eligible under the terms and conditions of the Plan, nor are said monies equivalent to the proceeds of an insurance policy in which a beneficiary may be designated; and no participant or beneficiary of the Plan may, during his lifetime, assign, devise or will monies from this Trust, and any attempt so to do shall be void.

ARTICLE XIII

This instrument shall be construed, regulated and administered under the laws of the District of Columbia.

IN WITNESS WHEREOF, each of the parties signatory hereto, pursuant to proper authority, has caused this instrument, effective December 6, 1974, to be signed

by its proper officers or representatives in Washington, D.C., this ——— day of December, 1974.

UNITED MINE WORKERS OF AMERICA

_____

International President

_____

International Vice President

_____

International Secretary-Treasurer

BITUMINOUS COAL OPERATORS ASSOCIATION, INC.

_____

President

Company Proposal
March 14, 1975

Article XIX—*Welfare and Retirement*

Section (a) General Purpose

This article make provision for pension, group life insurance, survivor benefits, loss of time, and medical care for Employees covered by this Agreement and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate Plans and a Pension Trust and an Insurance Contract described in Section (b) and (c) of this Article.

A summary of the benefits to be provided appears immediately following this Article.

The general purpose of the Plans established by this Article shall be to provide life insurance and health care for working and retired miners and their dependents; pensions for miners upon their retirement; and health care and financial support for eligible disabled miners, miners' widows and surviving dependents as provided by the Pension Trust and Insurance Contract and Plans established under this Article.

Section (b) Pension Trust

Effective January 12, 1975, the Company will establish a Pension Trust to be known as the AMAX Belle Ayr Mine Pension Trust. The pensions to be paid from this Pension Trust are as set forth in the Summary of Principal Provisions Health and Retirement Benefits, Section (1) through Section (6), which is incorporated in this Agreement.

The Company shall select a trustee to hold and invest the Fund in accordance with the terms of a trust agreement, a copy of which shall be made available to the Union upon written request. The Company may, from time to time, change the trustee then serving under the trust agreement. Any trustee designated hereunder how-

ever, shall be a bank, trust company or insurance company incorporated under the laws of the United States or any of the states thereof, and shall be qualified to operate thereunder.

The Fund shall be used to pay benefits as provided in the Plan. No part of the principal or income of the Fund shall, in any event, be used for or diverted to purposes other than those provided in the Plan, and no benefits shall be paid out of the Fund without prior authorization of the administrator.

It is the intention of the Company that the Pension Trust shall constitute an irrevocable trust and that no benefits or money payable from the Pension Trust shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and that any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void.

Section (c) Insurance Contract

The Company intends to contract with an insurance company admitted to do business in the State of Wyoming to provide the life insurance and welfare benefits set forth in the Summary of Principal Provisions Health and Retirment Benefits, Section (7), which is incorporated in this Agreement.

Section (d) Contributions by Employer

During the life of this Agreement the Company will contribute to the Pension Trust each year the amount based on acturial calculations to provide for current service benefits and to amortize any unfunded past service liabilitiets over a period not to exceed 30 years. The contributions will be calculated by a qualified Actuary who is a member of the Society of Actuaries for American Academy of Actuaries.

During the life of this Agreement, the Company will pay the premiums required by the insurance company to provide the life insurance and welfare benefits provided in this Agreement.

Section (e) Administration of the Pension Plan

The Plan shall be administered by an individual (hereinafter called the "administrator") appointed by the Company who shall serve without compensation from the Fund and who shall be empowered to employ the services of clerical or other office personnel, provided such services are also without compensation from the Fund. Said administrator shall administer this Plan in accordance with applicable provisions thereof, and his authority with regard to interpretation of said provisions shall be final and binding on the parties hereto.

The Company shall promptly notify the Union in writing of the appointment of the administrator of the Plan, and shall promptly notify the Union in writing in the event such appointment is rescinded and some other administrator is appointed.

The administrator shall have such powers only as are specifically provided herein, including the following:

a) To prescribe procedure to be followed by employees in filing applications for benefits and for furnishing of evidence necessary to establish employees' rights to such benefits;

b) To make determinations as to the rights established by the Plan of any employee applying for or receiving benefits because of retirement or permanent and total disability, and to afford any such employee dissatisfied with any such determination the right to a hearing thereon before the administrator;

c) To develop procedures for the establishment of credited service, as prescribed by the Plan, or employees; and after affording employees an opportunity to make objections with respect thereto, to establish such credited service conclusively in advance of retirement;

d) To obtain from the Company, the Union, the trustee, the actuary, and from the employees such

information as shall be necessary for proper administration of the benefit provisions of the Plan;

e) To prepare an annual statement of the aggregate assets, receipts and disbursements of the Fund and a report on the funding status of the Plan. Such annual report shall be prepared as quickly as practicable after January 1 of each year, and shall be made available to the Union and to such agencies of federal, state or local governments as may or subsequently be required;

f) To authorize the trustee to pay benefits from the Trust Fund in accordance with the Plan, and to establish necessary procedures therefor;

g) To approve and distribute in such manner as the administrator determines appropriate information explaining the Plan; and

h) To furnish the Company and the Union, upon request, such reports as are reasonable and appropriate.

Section (f) Miscellaneous Provisions

The Company intends after adequate notice and consultation with the Union, to make such changes in the Plans including any retroactive modifications or amendments, which shall be necessary:

a) to conform the terms of each Plan to the requirements of the Employee Retirement Income Security Act of 1974, or any other applicable federal law, and the regulations issued thereunder;

b) to obtain a determination letter from the Internal Revenue Service that the Pension Plan will meet the Requirements of Section 401 of the Internal Revenue Code;

c) to establish the deductibility for income tax purposes of any and all contributions made by the Company to the Pension Trust and insurance conpany;

d) to comply with all applicable court or government decisions or rulings.

SUMMARY OF PRINCIPAL PROVISIONS WELFARE AND RETIREMENT BENEFITS

(1) ELIGIBILITY FOR BENEFITS

All years of employment in the coal mining industry will be credited in determining a miner's *eligibility* for pension and welfare benefits. Years of employment in the coal mining industry means employment with the Belle Ayr Mine of the AMAX Coal Company or with a signatory employer contributing to the United Mine Workers of America Pension and Benefit Trusts.

(2) PENSIONS FOR MINERS WHO RETIRE AFTER THE EFFECTIVE DATE OF THIS AGREEMENT BUT PRIOR TO JANUARY 1, 1977:

A working miner who retires after the effective date of this Agreement but prior to January 1, 1977, and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon an entirely new Plan.

The earliest retirement age under this Plan will be 55. A miner may retire at 55 with 10 or more years of employment in the coal mining industry.

Pension credits under the new Plan are increased as a miner accumulates more years of employment. Benefits are also increased based based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the of 62 or more. If a miner retires under this Plan after the effective date of this agreement but prior to January 1, 1977, benefit credits for employment in the coal mining industry are as follows:

$13.00 per month multiplied by the years of employment for the first 10 years of employment

$13.50 per month multiplied by the years of employment for the second 10 years of employment

$14.00 per month multiplied by the years of employment for the third 10 years of employment

$14.50 per month multiplied by the years of employment for each year over 30 years of employment

To estimate your pension under the terms of this new Plan, see the table on page 138-141

The benefit derived above will be reduced by any benefit the miner is entitled to receive from the United Mine Workers of America Pension Trusts.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50% of his pension until her death.

As a hedge against the anticipated increase in the cost of living, miners who retire after the effective date of the Agreement but prior to January 1, 1977, will receive a $10.00 per month increase in 1977.

(3) PENSIONS FOR MINERS WHO RETIRE IN 1977:

Benefits under the new Plan will be increased for miners retiring in 1977. Subject to the same terms as paragraph (2), the maximum benefit schedule applicable in 1977 will be as follows:

$13.50 per month multiplied by the years of employment for the first 10 years of employment

$14.00 per month multiplied by the years of employment for the second 10 years of employment

$14.50 per month multiplied by the years of employment for the third 10 years of employment

$15.00 per month multiplied by the years of employment for each year over 30 years of employment

If you retire in 1977, estimate your pension by referring to the table on page ——.

Upon the death of a miner receiving a pension under this new Plan, his widow will receive a pension equal to 50% of his pension until her death.

(4) PENSIONS FOR DISABLED MINERS:

A miner who becomes permanently and totally disabled as the result of a mine accident after the effective date of this Agreement will become eligible for pension benefits according to the following schedule:

(a) If a miner has LESS than ten years of employment in the coal mining industry at the time of his disabling accident, he will receive a $125 per month pension for life.

(b) If a miner has TEN years or more of employment in the coal mining industry at the time of his disabling accident, he will receive an increased pension based upon the years of employment which he has accumulated at the time of his disabling accident. If the disabling accident occurs after the effective date of this Agreement but prior to January 1, 1977, the minimum pension payment will be $125 per month, but such amount will be increased to the pension levels at age 62 shown in the table on page .... If the disabling accident occurs on or after January 1, 1977, the initial pension levels at age 62 shown on page — will apply immediately. (For example, a miner disabled during this period of time who is age 44 and has 22 years of employment, would be eligible effective January , 1975, for a disability pension of $293.00 per month). If the disabling accident occurs in 1977, the higher schedule of benefits shown in the table on page will apply. (In this case the example Employee would receive $304.00 per month.)

(5) PENSIONS FOR WIDOWS:

The new Plan provides, for the first time, for widows' pensions. Benefits will ordinarily be payable according to the following schedule:

(a) If a miner working on or after the effective date of this Agreement becomes eligible for a pension at any time thereafter, his widow will be entitled to receive a Surviving Spouse pension equal to 50% of his pension until her death.

(b) If, on or after the effective date of this Agreement, a working miner dies (regardless of cause) and would have been eligible for an immediate pension had he retired on the date of his death, his widow will be eligible for a pension equal to 50% of the pension he would have received, and will receive this pension until her death.

(6) DEFERRED VESTED PENSION

If a working miner terminates his employment from the Belle Ayr Mine of the AMAX Coal Company for any reason after completing 10 years of employment in the coal mining industry, and before age 55, he will be eligible to receive a pension at age 62, or an actuarially reduced pension at any time after age 55. The pension will be based on the benefit rates stated in the Plan at the time the miner terminates his employment and total years of employment in the coal mining industry reduced by any benefit the miner is entitled to receive from the United Mine Workers of America Pension Trusts.

If a working miner terminates his employment from the Belle Ayr Mine of the AMAX Coal Company for any reason before completing 10 years of employment in the coal mining industry and before age 55, but subsequently continues to work in the coal mining industry and subsequently complete 10 years of employment in the coal mining industry, he will be eligible to receive a pension at age 62 or an actuarially reduced pension at any time

after age 55 upon proper application to the AMAX Coal Company. The pension will be based on the benefit rates stated in the Plan at the time the miner terminates his employment from the Belle Ayr Mine of the AMAX Coal Company and the years of employment with the Belle Ayr Mine of the AMAX Coal Company.

(7) WELFARE BENEFITS—See "ELIGIBILITY FOR BENEFITS")

(a) First Year of Contract:

Under the terms of this agreement, insurance benefits will be as follows and the company will pay the entire cost of the program.

Basic Group Life Benefits Coverage	*Benefit*
Working miner with 1 to 5 dependents	$8,500
Working miner with 5 to 10 dependents	$9,000-$11,000
Working miner with no dependents	$3,000
Pensioned miner with no dependents	$3,000
Pensioned miner with dependents	$3,500
Accidental Death and Dismemberment (24 hour coverage)	
Working miner with 1 to 5 dependents	Amount equal to life insurance plus $100 per month to widow or to surviving children to age 22. $100 benefit to widow stops at death or remarriage.
Working miner with 5 to 10 dependents	

Sickness and Accident Insurance
(90 days is presumed recovery)
Sickness—$100 per week
Service of:

0 to 6 months	no benefit
6 months to 5 years	13 weeks*
5 years to 10 years	26 weeks*
10 years or more	52 weeks*

* 1st day in hospital or 8th day of sickness. Primary Social Security carveout as appropriate as well as Workmen's Compensation (including State Black Lung), State or Federal disability benefits (excluding veterans benefits) and Federal Black Lung.

(Sickness and Accident Insurance benefits effective 6 months after date of signing.)

Accident (24 hour coverage)	1st day of
$100 per week	accident or 1st
Service	day in hospital
Date of employment:	—52 weeks
	(Carveout
	provisions same
	as "Sickness"
	shown above)

Medical Services—For miners and their dependents

These benefits are also extended to surviving spouses, retired miners and to eligible dependents of such spouses and retirees. In the case of surviving spouses the coverage is extended until remarriage or death. In the case of dependent children, until marriage or age 22. For those eligible for Medicare whether by reason of age or disability, such benefits will be carved out of this Medical program. The standard Coordination of Benefits clause will operate.

Hospital—	365 days semi-private
Special services	unlimited
Intensive care	in full
Pre-admission testing	in full
Out-patient, emergency accident and life saving services	in full
Out-patient surgery	in full
Out-patient radiation therapy including chemotherapy	in full
Maternity	in full
Pap smear tests and acupuncture when administered under the direction of a licensed physician	in full
Physicians Services—	
In or out of hospital	
Surgical	Reasonable and customary
Obstetrical	reasonable and customary
In-hospital medical services	in full
Anesthesia	reasonable and customary
Radiation therapy	reasonable and customary
Diagnostic X-ray	reasonable and customary
Emergency accident and life saving	reasonable and customary
Well baby care—3 months following birth	reasonable and customary
Pap smear test and acupuncture (when administered under the direction of a licensed physician)	reasonable and customary

Major Medical
Maximum $250,000 with $100 deductible—$300 family 80-20 coverage for the first $5000 of covered expenses, thereafter the plan pays 100% for the balance of the calendar year.
Automatic reinstatement of $1000 each January 1.
Standard "covered expenses" provided include convalescent and nursing home care.
Special Accident Coverage
$300 each occurance

(b) Second Year Of Contract:
Prescription Drugs
$1.00 deductible per prescription

(c) Third Year Of Contract:
Vision Care

1 examination per year	$15.00
1 set of lenses per year	$8-$10-$12
1 set of frames per 2 years	$7.00

The group life insurance, survivor benefits, accidental death and dismemberment insurance, accident and sickness benefits and the comprehensive medical care plan will be provided through an insurance contract with the Metropolitan Life Insurance Company.

It is proposed that in administering the weekly loss of time benefits the checks for such benefits be drawn at the coal company office on drafts provided by the Metropolitan for that purpose. This will assure prompt payment of the weekly benefit and avoid unusual mail delays.

Since all medical benefits are on an "in full" basis it is expected that payment will be made directly to the purveyor of services.

The terms and conditions of the Welfare and Retirement Program (Article XVIII of this agreement) provided by Amax Coal Company, Belle Ayr Mine, are properly described in detail in Employee Booklets which will be provided at a later date.

The terms and conditions outlined in Article XVIII (Welfare and Retirement) are intended only to summarize the provisions of the Welfare and Retirement Plan.

For the Company _____

For the Union _____

Date _____

RETIRE IN 1975 and 1976

Years of Service	Age 55	56	57	58	59	60	61	62 or older
10	102.70	106.60	110.50	114.40	118.30	122.20	126.10	130.00
11	113.40	117.70	122.00	126.30	130.60	134.90	139.20	143.50
12	124.03	128.74	133.45	138.16	142.87	147.58	152.29	157.00
13	134.73	139.84	144.95	150.06	155.17	160.28	165.39	170.50
14	145.36	150.88	156.40	161.92	167.44	172.96	178.48	184.00
15	156.06	161.98	167.90	173.82	179.74	185.65	191.58	197.50
16	166.69	173.02	179.35	185.68	192.01	198.34	204.67	211.00
17	177.39	184.12	190.85	197.58	204.31	211.04	217.77	224.50
18	188.02	195.16	202.30	209.44	216.58	223.72	230.86	238.00
19	198.72	206.26	213.80	221.34	228.88	236.42	243.96	251.50
20	209.35	217.30	225.25	233.20	241.15	249.10	257.05	265.00
21	220.41	228.78	237.15	245.52	253.89	262.26	270.63	279.00
22	231.47	240.26	249.05	257.84	266.63	275.42	284.21	293.00
23	242.53	251.74	260.95	270.16	279.37	288.58	297.79	307.00
24	253.59	263.22	272.85	282.48	292.11	301.74	311.37	321.00
25	264.65	274.70	284.75	294.80	304.85	314.90	324.95	335.00

26	275.71	286.18	296.65	307.12	317.59	328.06	338.53	349.00
27	286.77	297.66	308.55	319.44	330.33	341.22	352.11	363.00
28	297.83	309.14	320.45	331.76	343.07	354.38	365.69	377.00
29	308.89	320.62	332.35	344.08	355.81	367.54	379.27	391.00
30	319.95	332.10	344.25	356.40	368.55	380.70	392.85	405.00
31	331.44	344.02	356.60	369.18	381.76	394.34	406.92	419.50
32	342.86	355.88	368.90	381.92	394.94	407.96	420.98	434.00
33	354.35	367.80	381.25	394.70	408.15	421.60	435.05	448.50
34	365.77	379.66	393.55	407.44	421.33	435.22	449.11	463.00
35	377.26	391.58	405.90	420.22	434.54	448.86	463.18	477.50
36	388.68	403.44	418.20	432.96	447.72	462.48	477.24	492.00
37	400.17	415.36	430.55	445.74	460.93	476.12	491.31	506.50
38	411.59	427.22	442.85	458.48	474.11	489.74	505.37	521.00
39	423.08	439.14	455.20	471.26	487.32	503.38	519.44	535.50
40	434.50	451.00	467.50	484.00	500.50	517.00	533.50	550.00

Years of Service	RETIRE IN 1977 Age 55	56	57	58	59	60	61	62 or older
10	106.65	110.70	114.75	118.80	122.85	126.90	130.95	135.00
11	117.71	122.18	126.65	131.12	135.59	140.06	144.53	149.00
12	128.77	133.66	138.55	143.44	148.33	153.22	158.11	163.00
13	139.83	145.14	150.45	155.76	161.07	166.38	171.69	177.00
14	150.89	156.62	162.35	168.08	173.81	179.54	185.27	191.00
15	161.95	168.10	174.25	180.40	186.55	192.70	198.85	205.00
16	173.01	179.58	186.15	192.72	199.29	205.86	212.43	219.00
17	184.07	191.06	198.05	205.04	212.03	219.02	226.01	233.00
18	195.13	202.54	209.95	217.36	224.77	232.18	239.59	247.00
19	206.19	214.02	221.85	229.68	237.51	245.34	253.17	261.00
20	217.25	225.50	233.75	242.00	250.25	258.50	266.75	275.00
21	228.74	237.42	246.10	254.78	263.46	272.14	280.82	289.50
22	240.16	249.28	258.40	267.52	276.64	285.76	294.88	304.00
23	251.65	261.20	270.75	280.30	289.85	299.40	308.95	318.50
24	263.07	273.06	283.05	293.04	303.03	313.02	323.01	333.00
25	274.56	284.98	295.40	305.82	316.24	326.66	377.08	347.50

26	285.98	296.84	307.70	318.56	329.42	340.28	351.14	362.00
27	297.47	308.76	320.05	331.34	342.63	353.92	365.21	376.50
28	308.89	320.62	332.35	344.08	355.81	367.54	379.27	391.00
29	320.38	332.54	344.70	356.86	369.02	384.18	393.34	405.50
30	331.80	344.40	357.00	369.60	382.20	394.80	407.40	420.00
31	343.65	356.70	369.75	382.80	395.85	408.90	421.95	435.00
32	355.50	369.00	382.50	396.00	409.50	423.00	436.50	450.00
33	367.35	381.30	395.25	409.20	423.15	437.10	451.05	465.00
34	379.20	393.60	408.00	422.40	436.80	451.20	465.60	480.00
35	391.05	405.90	420.75	435.60	450.45	465.30	480.15	495.00
36	402.90	418.20	433.50	448.80	464.10	479.40	494.70	510.00
37	414.75	430.50	446.25	462.00	477.75	493.50	509.25	525.00
38	426.60	442.80	459.00	475.20	491.40	507.60	523.80	540.00
39	438.45	455.10	471.75	488.40	505.05	521.70	538.35	555.00
40	450.30	467.40	484.50	501.60	518.70	535.80	552.90	570.00

SUPREME COURT OF THE UNITED STATES

No. 80-289

UNITED MINE WORKERS OF AMERICA, LOCAL NO. 1854, ET AL., *Petitioners*

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ORDER ALLOWING CERTIORARI

Filed January 19, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, limited to Question 1 presented by the petition. The case is consolidated with No. 80-692, National Labor Relations Board v. Amax Coal Company, A Division of Amax, Inc., et al., and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 80-692

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMAX COAL COMPANY, A DIVISION OF AMAX, INC., ET AL.

ORDER ALLOWING CERTIORARI

Filed January 19, 1981

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